



Summary of Redline Edits to the Proposed Decision
Findings of Fact, Conclusions of Law, Ordering Paragraphs and Appendices

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Findings of Fact:

14: Insert “wireline” before Affiliates.

16: Insert: “Except as set forth below, it” and Delete “It”.

18: Replace “purposed” with “purposes”.

19: Delete “a collection of blocks defined by”.

41: Replace “applicant” with “state video franchise holder”.

Modify 51: Bonds are not issued until an applicant obtains a California Video Franchise Certificate. Therefore, it is reasonable for the Commission to impose a bond requirement to determine whether applicants possess financial, legal and technical qualifications necessary to be on state video franchise holders after receipt of a Certificate and prior to initiating video service.

Modify 52: The Commission’s bond requirement only demonstrates that the applicant state video franchise holder possesses the “qualifications” necessary to be a state video franchise holder in a proposed offer video service area.

Modify 61: It is reasonable to require that a state video franchise holder provide a copy of its executed bond with its application to the Executive Director within five (5) business days after receipt of a Certificate and prior to initiating video service. It is reasonable to require that the state video franchise applicant provide a copy of this bond to affected local entities because it is part of the attest to this in its application.

62: Replace “through” with “following” and “application” with “certificate”.

69: Replace “an applicant” with “a state video franchise holder”.

91: Correct spelling of “Commission”.

101: Replace “will not” with “may”.

103: Replace January “7” with “1”.

111: Insert “aggregate” build-out data.

112: Insert “aggregate” build-out data.

119: Insert “wireline” before Affiliates.

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120: Insert “wireline” before Affiliates.

126: Delete “It is reasonable for the Commission to hold public hearings whenever when franchising, anti-discrimination and build-out, reporting; cross-subsidization, or user fee provisions are at issue.”

Insert “Under DIVCA, the Commission is only required to hold hearings if a holder seeks an extension of time to comply with § 5890 (b), (c), or (e); and before issuing a decision in a complaint brought by a local government, or a Commission investigation, regarding whether a holder is offering video service as required by § 5890.”

127: Replace “and” with “or”.

130: Insert “(d)” after § 5890.

131: Insert “(d)” after § 5890.

Conclusions of Law

18: Replace “and” with “or”

19: Insert “wireline” before Affiliates; Delete “provisions cutting across communications sections” after DIVCA.

20: Insert “wireline” before Affiliates.

22: Insert “, limited to wireline affiliates,” after herein.

23: Insert “, limited to wireline affiliates,” after herein.

24: Delete “a collection of blocks defined by”

Modify 36: The requirement to name the Commission as an obligee of the bond and the requirement that the franchise ~~applicant~~holder ~~submit a copy of the~~ provide a copy of an executed bond as part of the application to the Executive Director within five (5) business days after receipt of a Certificate and prior to initiating video service is consistent with DIVCA.

Modify 37: DIVCA ~~g~~does not permit the submission of a financial statement in lieu of a bond to demonstrate that an ~~applicant~~franchise holder is qualified to ~~hold a state~~provide video franchise service.

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47: Correct spelling of “amend”.

55: Replace “applicant” with “franchise holder”.

67: Correct spelling of “Commission”.

69: Delete “a”

72: Insert “during”

95: Replace “Finding of Fact” with “Conclusion of Law”.

106: Delete “5890(g)” and replace it with: “5810(2)(G)”

107: Delete: “(i) our general enforcement powers in Public Utilities Code § 5890(g) and (ii)”

108: Delete: “Public Utilities Code § 5890(g)” and replace it with: “our specific authority to administer the state video franchise application process pursuant to Public Utilities Code § 5840”

109: Replace “proceedings” with “procedure”; Delete “of Public Utilities Code § 5890 compliance”.

116: Delete “(i)” and “or (ii) initiated in response to a complaint filed by a local government if the reporting requirement at issue is used to monitor compliance with Public Utilities Code § 5890”

119: Delete entire finding.

Ordering Paragraphs

12: Delete “franchising; anti-discrimination and build-out; reporting; cross-subsidization; or user fee provisions are at issue.”

And replace it with “a holder seeks an extension of time to comply with § 5890 (b), (c), or (e); or where a complaint is brought by a local government, or an investigation is opened by the Commission, regarding whether a holder is offering video service as required by § 5890.

13: Insert “where required” after “public hearings”.

15: Insert “where required” after “public hearings”.

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Appendix B

Page 3 at E: Delete “or having advanced telecommunications capability,” to conform to definition in DIVCA

Page 8 at B.: Insert “wireline” before Affiliates.

Page 10 at IV.A.1a) Modify wording regarding the timing of a Franchise Holder to provide a bond “to the Executive Director within five (5) business days after receipt of a Certificate and prior to initiating video service.”

Page 11 at 2(b): Insert at end: “Delivery may be accomplished by serving the document as provided in Commission Rules of Practice and Procedure 1.9 or 1.10.”

Page 14 at B.1: Insert “wireline” before Affiliates.

Page 21, FN 60: Delete “, and since State Video Franchise Holders will have to record this Broadband information by Census Tract, we expect that it will be difficult for a State Video Franchise Holder to successfully demonstrate that it does not maintain other forms of Broadband information on a Census Tract basis”.

Page 23 at C: Delete: “aggregated according to technology used in service provision” and insert in its place: “based on year-end data, on an aggregated basis” in order to conform to DIVCA.

Page 23 at D: Insert “wireline” before Affiliates.

Page 24 at F~~G~~: Resequence Section. Insert “wireline” before Affiliates.

Page 24 at G~~F~~: Resequence Section.

Page 24 at end: Insert new section: “H. **Conflict** Because the purpose of this General Order is to promulgate the rules necessary to implement DIVCA, in the event of any conflict between this General Order and DIVCA, including future amendments, the terms of DIVCA shall control.”

Attachment A - Application

Before 14. Insert “*Applicant may attest in its application that it will provide the socioeconomic status information required in Questions 14 and 15 within four months of*

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filing an application, skip Questions 14 and 15, and proceed to Question 16. Otherwise, the Applicant must provide the socioeconomic status information required in Questions 14 and 15 with the application.”

17. Modify wording regarding the Applicant’s attestation to the timing of a Franchise Holder to provide a bond.

~~Attach to this Application, as Appendix CB, a copy of a fully executed bond in the amount of \$1000 per 20,000 households in the Video Service Area, with a \$100,000 minimum and a \$500,000 maximum. The bond must list the Commission as obligee and be issued by a corporate surety authorized to transact a surety business in California. The Applicant will attest that within five (5) business days after receipt of a California Video Franchise Certificate and prior to initiating video service, the Franchise Holder will provide a copy of a fully executed bond in the amount of \$100,000 per 20,000 households in the Video Service Area, with a \$100,000 minimum and a \$500,000 maximum to the Executive Director. The bond must list the Commission as obligee and be issued by a corporate surety authorized to transact a surety business in California.~~

20. Delete references to a complete application including **Appendix B** (formerly Financial , Legal and Technical Qualifications) and **Appendix C** (formerly Bond).

Attachment A - Affidavit

At 3, Insert “in the video service area” to specify the Local Entities to which copies of the Application will be delivered.

Add New 6 and 7 – Attestation Requirements regarding the bond and provision of socioeconomic data.

6. (Holder) will provide the socioeconomic status information required in Questions 14 and 15 of the Application within four months of filing an application.

7. (Holder) will provide a copy of a fully executed bond in the amount of \$100,000 per 20,000 households in the Video Service Area, with a \$100,000 minimum and a \$500,000 maximum to the Executive Director within five (5) business days after receipt of a California Video Franchise Certificate and prior to initiating video service. The bond must list the Commission as obligee and be issued by a corporate surety authorized to transact a surety business in California.

At 5, 5.a., 5.b.i., and 5.b.ii - Insert “wireline” before Affiliates.

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At 5.c., Modify language consistent with Appendix C.

c. Cross-subsidization: If Applicant or its affiliates also provides stand-alone, residential, primary-line basic telephone service, Applicant agrees to refrain from using any increasing the rate of this service increase of its or its Affiliates' basic telephone service offerings to reduce costs of Applicant's to finance the cost of deploying a network to provide video service offerings.

Appendix C

First Paragraph: Insert “wireline” before Affiliates.

At 1. Insert “wireline” before Affiliates.

At 3. Modify language consistent with affidavit.

3. **Cross-subsidization:** If Applicant or its affiliates also provides stand-alone, residential, primary-line basic telephone service, Applicant agrees to refrain from using any increasing the rate of this service increase of its or its Affiliates' basic telephone service offerings to reduce costs of Applicant's to finance the cost of deploying a network to provide video service offerings.

Appendix D

Paragraph 1: Replace “match” with “assign” and “with” with “to”.

Appendix E

Modify 3. and 4. to correct instruction for calculating low income households and low income households that are offered video service.

3. Number of Low-Income Households in the Video Service Area: The Video service provider compiles low-income householding unit counts ~~for~~from individual Census Block Groups falling within its video service area, and determines the percentage of low income households as of January 1, 2007. This percentage is multiplied by the number of households (Item #2) to calculate the number of low-income housing units. Housing unit counts by Census Block Group then are summed to produce Census Tract results.
4. Number of Low-Income Households Offered Video Service: The video service provider multiplies (i) the total number of housing

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units it offers video service in a Census Block Group by (ii) the percentage of low-income households ~~ing units~~ in the Census Block Group. The percentage of low-income households ~~ing units~~ is calculated as of January 1, 2007 using U.S. Census projections of low-income and total households by Census Block Group by—
~~dividing the number of low income housing units (Item #3) by the total house units in a Census Block Group (Item #4).~~ Census Block Group counts of low-income housing units offered video service ~~then~~ are then summed to produce Census Tract counts.

Appendix H

See “How” Sections under Penalties Actions 1 and 3 and Formal Investigations Actions 1, 2, 3, 4 and 5.

Replace “will include public hearings” with “may include public hearings”.

Add “Note: Under DIVCA, the Commission is only required to hold hearings if a holder seeks an extension of time to comply with § 5890 (b), (c), or (e); and before issuing a decision in a complaint brought by a local government, or a Commission investigation, regarding whether a holder is offering video service as required by § 5890. In all other instances, pursuant to § 5810(2)(G), the Commission retains discretion under applicable statutes and rules, consistent with due process, to determine whether or not to hold a hearing and, if so, what type of hearing.”

Findings of Fact

1. The Digital Infrastructure and Video Competition Act became effective January 1, 2007.
2. Preventing an incumbent cable operator in one service area from operating under a state video franchise in a new area would not promote widespread access to the most technologically advanced cable and video services in California.
3. The ability of a local entity to force an incumbent cable operator to agree to extra concessions during the time following the expiration of a local franchise but prior to when the incumbent may operate under a state video franchise would disadvantage incumbent cable operators over new entrants and create an unfair and unlevel playing field for market competitors.
4. Appropriate implementation of DIVCA, which is designed to create a fair and level playing field for all video service providers, requires the automatic extension of local video franchises that (i) expire before January 2, 2008 and (ii) are held by incumbent cable operators planning to seek state video franchises.
5. Failure to allow state video franchise applications in advance of the expiration of local franchises would place incumbent cable operators in legal limbo during the time between expiration of their local franchises and issuance of their state video franchises.
6. It is reasonable and consistent with DIVCA's objectives to permit incumbent cable operators to apply for state video franchises before expiration of their local franchises.

7. Without further Commission action, the potential for evasion of statutory obligations increases through the holding of multiple state franchises via multiple entities.

8. Placing stipulations on when a video service provider is eligible to operate under a state video franchise will decrease the complexity of the application review process and reduce the potential for state video franchise holders to evade compliance with statutory obligations.

9. Stipulations placed on when a video service provider is eligible to operate under a state video franchise are relevant to implementation of statutory provisions concerning the cross-subsidization prohibition, build-out requirements and reporting obligations of DIVCA.-

10. Without further Commission action, the Commission's ability to enforce build-out requirements could be impaired if a corporate family divides its video or telephone and video services among different operating entities in California.

11. Without further Commission action, the Commission's authority and ability to prevent subsidization of video services with telecommunications funds pursuant to DIVCA could be challenged if a company divides its video and telecommunications services into two different operating entities.

12. Without further Commission action, it could be difficult, if not impossible, for the Commission to collect comprehensive broadband and video reports if a company separated its broadband operations from its video operations, or divided its video operations among multiple California entities

13. The proposal in R.06-10-005 to limit the award of a state video franchises to the parent company in a corporate family would be unduly burdensome.

14. It is necessary and reasonable to condition an applicant's eligibility for a state video franchise on its stipulating in its application affidavit that it and all its wireline affiliates' California operations will be included for the purposes of applying Public Utilities Code §§ 5840, 5890, 5960, and 5940.

15. The stipulations enumerated in Appendix C ensure that no state video franchise holder may evade DIVCA requirements due to the specific nature of its corporate structure.

16. Except as set forth below, it is reasonable to use as a definition of "affiliate" that set forth in R.92-08-008 and contained herein, because that definition is longstanding and commonly used in this forum.

17. R.92-08-008 states that "Affiliate" means any company 5 per cent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a state video franchise holder or any of its subsidiaries, or by that state video franchise holder's controlling corporation and/or any of its subsidiaries as well as any company in which the state video franchise holder, its controlling corporation, or any of the state video franchise holder's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership.

18. The Commission has found the definition of affiliate contained in R.92-08-008 as adequate for reporting purposes for some time.

19. It is reasonable to allow franchise applicants to describe their proposed video service area footprint as a collection of census block groups, or as ~~a collection of blocks defined by~~ a geographic information system digital boundary meeting or exceeding national map accuracy standards.

20. It is reasonable to define areas in the video service footprint as collections of touching census block groups or regions defined by geographic information system boundaries, because this definition provides adequate information about the footprint to the Commission and comports with common understanding of an “area.”

21. It is reasonable to require a video franchise applicant to provide an expected date of deployment for each area in the video service footprint pursuant to the definition adopted herein, and accordingly to require the applicant to provide an expected date of deployment for the entirety of each non-contiguous grouping or region included in its proposed video service footprint.

22. In some cases, requiring the provision of deployment data at a greater level of granularity in the application could place some applicants at a competitive disadvantage to other applicants.

23. Data contained in the franchise application is not subject to confidentiality protections.

24. The Commission will receive deployment data at a high level of granularity through reports that a franchisee must submit. This data is subject to confidentiality protections consistent with Public Utilities Code § 583.

25. Requiring applicants to provide deployment data in the application at a the level of detail adopted in the proposed General Order is reasonable

in light of the fact that the Commission will obtain granular information through reports that are subject to confidentiality protections.

26. Access and subscription to advanced communication technologies are important socioeconomic indicators.

27. Broadband and video services are becoming increasingly important to active participation in our modern-day economy and society.

28. Restricting socioeconomic indicators to income alone focuses too narrowly on economic factors, and fails to encompass social factors.

29. DIVCA's legislative purposes include promoting widespread access to the most technologically advanced video services and closing the digital divide.

30. It is reasonable to require the submission of information on access and subscription to advanced communications services as part of the socioeconomic information collected pursuant to DIVCA.

31. AT&T's proposal to not define "socioeconomic indicators" would lead to confusion by applicants as to what information we expect to be filed with the Commission.

32. The diversity of parties' comments on the definition of "socioeconomic status information" demonstrates that reasonable people can disagree regarding the appropriate definition.

33. The early collection of broadband and video services information will give the Commission time to address and resolve data collection and analysis issues that arise.

34. The first report on broadband and video services data is due July 1, 2008.

35. Due to the timing of data collection, requiring the submission of extensive socio-economic data simultaneously with the filing of a video

franchise application, particularly for applications submitted early in a calendar year, is not reasonable.

36. Permitting the applicant for a video franchise to attest in its application that it will provide the Commission with the requested socioeconomic status information within four months of filing an application ensures that the Commission will have appropriate baseline information for reviewing a company's progress, but does not impose an unnecessary barrier to entry.

37. A four-month period for submitting socioeconomic data mirrors the amount of time allotted to state video franchise holders for their preparation of annual broadband and video reports.

38. It is reasonable to permit the applicant for a video franchise to attest in its application that it will provide the Commission with the requested socioeconomic status information within four months of filing an application.

39. It is not reasonable to deem an application incomplete when an applicant has attested that it will provide the Commission with the requested socioeconomic status information within four months of filing an application instead of in the application itself.

40. It is reasonable for the application to include information on all parent entities, if more than one, including the ultimate parent.

41. Since the Commission is requiring the submission of a bond to provide adequate assurance that the ~~applicant~~ state video franchise holder possesses the financial, legal and technical qualifications necessary to construct and operate the proposed system and promptly repair any damage to the public right-of-way caused by the applicant, it is not

necessary to explain what proof of legal and technical qualifications the Commission expects of an applicant.

42. Coordination and exchange of information with local entities will facilitate the success of the new state video franchise system.

43. The staff of the Commission's new video franchise unit is the appropriate unit to develop plans to coordinate with local entities.

44. It serves no useful purpose to require of applicants a showing as to how they intend to meet the statute's build-out and anti-discrimination requirements; rather, the focus should be on their concrete actions, or lack thereof, as franchisees.

45. Monitoring the actions of a franchisee through the Commission's reporting requirements will enable the Commission to determine whether a franchisee is complying with the statute's build-out and anti-discrimination requirements and to take appropriate enforcement steps if it is not complying.

46. Pursuant to Public Utilities Code § 5810(c), it is the intent of DIVCA that collective bargaining agreements be respected.

47. Pursuant to Public Utilities Code § 5870(b), a transferee of a state video franchise must agree that any collective bargaining agreement entered into by a video service provider shall continue to be honored, paid, or performed to the same extent as would be required if the video service provider continued to operate under its franchise.

48. To ensure the Commission is adequately informed of collective bargaining requirements when a state video franchise is transferred, it is consistent with DIVCA to require state video franchise holders to produce annual reports to that indicate whether their employees are subject to a collective bargaining agreement.

49. When transfer of a state video franchise license is sought, it is consistent with DIVCA to require a transferee to complete an affidavit that attests it will respect existing collective bargaining agreements.

50. The affidavit requires the affiant to swear that she or he has “personal knowledge of the facts,” is “competent to testify to [the facts],” and has “authority to make this Application behalf of and to bind the Company.”

51. Bonds are not issued until an applicant obtains a California Video Franchise Certificate. Therefore, it is reasonable for the Commission to impose a bond requirement ~~to determine whether applicants possess financial, legal and technical qualifications necessary to be on~~ state video franchise holders after receipt of a Certificate and prior to initiating video service.

52. The Commission’s bond requirement only demonstrates that the ~~applicant~~ state video franchise holder possesses the “qualifications” necessary to ~~be a state video franchise holder in a proposed offer~~ video service ~~area~~. It does not substitute for security instruments that are typically required by a local entity as part of its oversight of local rights-of way.

53. Locally required security instruments can best take into account size and scope of a state video franchise holder’s local construction and operations.

54. A tiered bonding requirement can be sufficient to establish a state video franchise holder’s qualifications without placing a significant barrier to entry on applicants that are qualified to provide video service.

55. It is reasonable to adopt a tiered bonding requirement for video franchise holders and to base the size of the bond on the number of a state video franchise holder's potential customers.

56. A requirement that state video franchise holders to carry a bond in the amount of \$100,000 per 20,000 households in a proposed video service area, with a required \$100,000 minimum and a cap of \$500,000, is reasonable in light of the record of this proceeding that demonstrated a range of bonding requirements currently in use.

57. A cap of \$500,000 on the bond requirement will not discourage competition.

58. It is reasonable to require state video franchise holders to carry a bond in the amount of \$100,000 per 20,000 households in a proposed video service area, with a required \$100,000 minimum and a cap of \$500,000 on the bond requirement.

59. It is reasonable to require that a corporate surety authorized to transact a surety business in California issue the franchisee's bond because the bond is to fulfill state purposes.

60. It is reasonable to require that the bond list the Commission as the obligee and no other obligees because the bond is designed only to prove to the state that the applicant possess adequate qualification to be a state video franchise holder and because local entities may require addition security instruments.

61. It is reasonable to require that a state video franchise holder provide a copy of its executed bond ~~with its application~~ to the Executive Director within five (5) business days after receipt of a Certificate and prior to initiating video service. It is reasonable to require that the state video

franchise applicant ~~provide a copy of this bond to affected local entities~~
~~because it is part of the~~attest to this in its application.

62. It is not reasonable to require a state video franchise holder to provide a copy of the executed bond sixty days before it commences video system construction in a local jurisdiction because notice of the bond is provided ~~through~~following the receipt of a state video franchise ~~application~~certificate.

63. It is reasonable to require that a video franchise holder not allow its bond to lapse during any period of its operation pursuant to a state video franchise.

64. An application fee of \$2000 is reasonable for recovering the costs to process an application for a video franchise.

65. The state franchising process is ministerial and less complex than the franchising process now in place at the local level.

66. It is not necessary to impose additional fees to cover other tasks associated with administering the state video franchise program. Such expenses will be recovered through annual user fees.

67. Since DIVCA envisions only a ministerial role for the Commission in the review of an application for a video franchise, it is not reasonable to permit protests of the application.

68. It would not be feasible to entertain protests, responses to protests, and Commission action to resolve the protests during the short period set by statute for the review of an application for a video franchise.

69. If ~~an applicant~~ state video franchise holder submits a bond to demonstrate its qualifications to operate a video franchise, it is not necessary or reasonable to solicit or consider further information on the qualifications of an applicant.

70. It is reasonable for the Commission to provide notice of incompleteness and the specific reason for incompleteness in the same document.

71. It is reasonable for the Commission to provide notice of incompleteness and the specific reason for incompleteness to affected local entities as well as to the applicant.

72. It is reasonable for the Commission to provide notice of the statutory ineligibility of an applicant, if known, to the applicant.

73. It is reasonable that an application will not be deemed granted due to the Commission's failure to act when the applicant is statutorily ineligible to hold a statewide franchise under DIVCA.

74. Since DIVCA specifies that an incumbent cable operator's right to abrogate a local franchise is triggered when a video service provider that holds a state franchise provides notice to a local jurisdiction that it intends to initiate providing service in all or part of that jurisdiction, it is reasonable to require the state franchise holder to provide notice of imminent initiation of service to the incumbent cable operators operating in that jurisdiction.

75. Requiring concurrent notification of the local entity and the incumbent cable operator of imminent market entry by a state franchise holder is reasonable in light of the Legislative intent that DIVCA create a fair and level playing field for all market competitors.

76. It is reasonable to determine and collect a user fee from state video franchise holders to finance the costs of administering the state video franchise program.

77. The Commission determines the utility user fee for all utilities based on revenues.

78. It is reasonable for the Commission to assess the user fees applicable to video franchise holders based on the revenues reported by video franchise holders.

79. There are significant policy and administrative benefits to harmonizing our collection of user fees across all fee payers by relying on a revenue-based system that uses the Commission's traditional payment schedule and processes.

80. The budget adopted by the Commission to administer the costs of the video franchising program is reasonable.

81. It is reasonable to base a user fee upon the percentage of all state video franchise holders' gross state video franchise revenues that is attributable to an individual state video franchise holder.

82. It is reasonable to determine the fee to be paid by each state video franchise holder annually.

83. The payment schedule developed herein for the payment of user fees is reasonable and consistent with the Commission collection of fees from utilities.

84. The replacement or reduction of our annual user fee with task-specific fees is inconsistent with the procedures used to assess fees on utilities subject to Commission jurisdiction.

85. For Fiscal Year 2007-2008, it is not practical to assess fees based on a franchisee's revenues.

86. For Fiscal Year 2007-2008, it is reasonable to assess user fees based on the pro rata share of households existing in its proposed video service area as adopted by the Commission through resolution.

87. The procedures for collecting franchise fees for Fiscal Year 2007-2008 as discussed herein, including the requirement that all franchisees pay for an entire year, are reasonable.

88. Basing a user fee for Fiscal Year 2007-2008 on a state video franchise holder's potential number of subscribers best responds to the legislative intent of creating a fair and level playing field and ensuring that areas served by small video service providers are not placed at a competitive disadvantage.

89. Basing user fees on telephone revenues or telephone lines is not reasonable because there is no direct nexus between telephone line and the provision of video service.

90. The proposal to collect year 1 fees in year 2 is not reasonable because the Commission has a legal obligation to collect fees in the year in which the state has authorized spending.

91. It is not reasonable to accord trade secret protection to information provided pursuant to the revenue reporting requirements of DIVCA since this is public information and also released to the Federal Communications Commission and reported to local entities.

92. It is not reasonable to permit state franchise holders to submit user fees and data upon which the fees are based at the same time. Under the adopted fee systems, such a procedure does not permit the determination of the appropriate user fee.

93. The procedures for reporting, setting, and receiving user fees contained herein are reasonable and necessary to the implementation of DIVCA.

94. The procedures for reporting, setting, and receiving user fees closely track the user fee procedures currently used by California

telecommunications carriers and should not raise novel implementation issues.

95. The employment reports required in General Order XX are reasonable.

96. It is reasonable to deem data on broadband and video availability to be collected “on a census tract basis” if a company uses a geocoding application that assigns its potential customers’ addresses in the manner prescribed in Appendix D.

97. It is reasonable to require reports on subscribership data to be based upon customers’ individual addresses and geocoded to specific, corresponding census tracts or other census units that nest within census tracts.

98. It is reasonable to require the reporting of broadband data on a census tract basis. It is reasonable to permit an approximation only if the state video franchise holder (i) does not maintain this information on a census tract basis in its normal course of business and (ii) the alternate reporting methodology reasonably approximates census tract data.

99. The reporting requirements pertaining to broadband and video services discussed herein are reasonable.

100. It is reasonable to release annual broadband and video data only if the Commission determines that such a disclosure of the data will be made only “as provided for pursuant to Section 583”.

101. It is reasonable to expect that aggregated broadband and video data presented in statutorily required reports ~~will not~~ may be competitively sensitive.

102. The level of detail required by the Commission for the reporting of broadband and video data by franchisees is reasonable.

103. Since Public Utilities Code § 5890(b) establishes low-income build-out requirements that are benchmarked upon household income as of January 7~~1~~, 2007, it is reasonable and useful for enforcement to require low-income household information to be reported as of January 1, 2007.

104. It is reasonable to define “telephone service area” as the area where the Commission has granted an entity a Certificate of Public Convenience and Necessity.

105. To the extent a company does not have customers in a region, the company need only collect and report publicly available U.S. Census data for that region.

106. The information and reports required to enforce the anti-discrimination and build-out provisions, as set forth herein, are reasonable.

107. Reports on video availability will allow the Commission to gauge whether a state video franchise holder has made a “substantial and continuous effort” to meet the build-out requirements established by Public Utilities Code § 5890.

108. It is reasonable to require state video franchise holders to submit annual reports on video service offered, both to California households generally and to low-income households specifically and on a census tract basis.

109. Unless information on free service to community centers, required pursuant to Public Utilities Code 5890(b)(3), is reported to the Commission, there is no way for the Commission to know if the law is being adhered to.

110. The reporting requirements pertaining to the provision of free service to community centers, adopted herein, are reasonable and necessary for enforcement of specific DIVCA provisions.

111. Restricting public access to aggregate build-out data would unduly impede external stakeholders' ability to monitor compliance with build-out requirements.

112. It is not reasonable to give confidential treatment to aggregate build-out data.

113. Participation by state video franchise holders in Commission diversity efforts is in the public interest.

114. For franchise holders who decline to provide workplace diversity data equivalent to that provided by CUDC members, it is reasonable to require the state video franchise holder to provide the Commission with copies of its Employment Information Report EEO-1 (EEO-1) filings to the federal Department of Labor. An EEO-1 form is attached as Appendix G.

115. The filing of a copy of EEO-1 places a minimal burden on state video franchise holders.

116. It is reasonable to afford information provided on EEO-1 confidential treatment, releasing only aggregate video industry data at the statewide level.

117. Pursuant to Public Utilities Code § 5810(a)(2), DIVCA was intended to *both* (a) "promote the widespread access to the most technologically advanced cable and video services" and (b) "complement efforts to increase investment in broadband infrastructure and close the digital divide," so it is reasonable to find that "free service" provided to community centers must include both broadband and video services.

118. It is not reasonable to impose eligibility requirements on community centers beyond those imposed in Public Utilities Code § 5890(b)(3).

119. The build-out requirements adopted herein that pertain to franchise holders or their wireline affiliates with more than one million telephone customers are reasonable.

120. The procedures adopted herein for determining the build-out requirements that pertain to franchise holders or their wireline affiliates with less than one million telephone customers are reasonable.

121. Since DIVCA's build-out requirements apply to holders of a video franchise (and not to applicants) and since DIVCA affords only thirty days for review to determine the completeness of an application, it is not reasonable to assess whether a proposed video service area is drawn in a discriminatory fashion at the time of application.

122. A review of a proposed video service area at the time of application is not necessary for proper enforcement of DIVCA, because local governments can bring complaints concerning discrimination to the Commission, which may open an investigation on discrimination matters at any time after the award of a video franchise.

123. The procedures adopted in General Order XX to extend build-out deadlines are reasonable.

124. It is reasonable for the Commission to limit its initiation of investigation to issues that arise regarding franchising, anti-discrimination, reporting, the cross-subsidization prohibition, and annual user fees.

125. It is not reasonable for the Commission to initiate an investigation if we do not have authority to regulate in response to investigative findings.

126. Under DIVCA, the Commission is only required to hold hearings if a holder seeks an extension of time to comply with § 5890 (b), (c), or (e); and before issuing a decision in a complaint brought by a local government, or a Commission investigation, regarding whether a holder is offering video service as required by § 5890. It is reasonable for the Commission to hold public hearings whenever when franchising, anti-discrimination and build-out, reporting, cross-subsidization, or user fee provisions are at issue.

127. Under current Commission practice, an investigation typically may include evidentiary, full panel, ~~and/or~~ public participation hearings conducted in public.

128. It is reasonable that any investigation to determine whether an applicant failed to comply with DIVCA franchising provisions follow standard Commission proceedings for the initiation of an investigation. These procedures include a majority vote of the Commission on an order initiating the investigation that either contains a report or the declarations of Commission witnesses pertaining to facts that demonstrate an investigation of Public Utilities Code § 5890 compliance is warranted.

129. It is reasonable for the Commission to undertake significant monitoring for the enforcement of the anti-discrimination and build-out requirements as discussed herein.

130. It is reasonable to require that a complaint by a local government alleging that a state video franchise holder has failed to meet the anti-discrimination and build-out requirements of Public Utilities Code § 5890 (d) include sworn declarations pertaining to the facts that the local government believes demonstrate a failure to fulfill obligations imposed by Public Utilities Code § 5890.

131. It is reasonable that the Commission require a local entity filing a complaint to clearly identify that the complaint pertains to a failure to meet an obligation imposed by Public Utilities Code § 5890 (d).

132. In any proceeding investigating a state video franchise holder's compliance with the anti-discrimination and build-out provisions of Public Utilities Code § 5890, it is reasonable to allow interested parties to petition the Commission to participate in the investigation and hearing process.

133. The procedures described herein for initiating and conducting a proceeding investigating allegations of a state video franchise holder's failure to comply with the anti-discrimination and build-out provisions of Public Utilities Code § 5890 are reasonable.

134. The procedures described herein for initiating and conducting a proceeding investigating allegations of a state video franchise holder's failure to comply with the reporting requirements of DIVCA are reasonable.

135. The procedures adopted herein to enforce DIVCA reporting requirements are reasonable.

136. The Commission has remained vigilant in enforcing existing prohibitions on unlawful cross-subsidization of intrastate telecommunications services.

137. The freezing of basic residential rates adopted in Public Utilities Code § 5950 ensures that there is no opportunity for basic residential rates to be increased to support video service operations during the period of the freeze.

138. The Commission has reasonable requirements in place to prevent unlawful cross-subsidization of video services as discussed herein.

139. The procedures discussed herein for investigation and sanctioning of the unlawful cross-subsidization of video services are reasonable.

140. The procedures contained in GO XX for enforcing the submission of user fees are reasonable.

141. It is reasonable for the Commission to exercise its authority to revoke or suspend a state video franchise in response to pattern and practice of material breaches that are established by local entities or the courts.

142. The procedures for initiating and conducting a proceeding concerning whether a pattern and practice of violations of DIVCA provisions that are regulated by local entities warrant suspension or revocation of the state video franchise are reasonable.

143. In conducting a proceeding concerning whether a pattern and practice of violations of DIVCA provisions that are regulated by local entities warrant suspension or revocation of the state video franchise, it is not reasonable for the Commission to consider the merits of alleged material breaches de novo.

144. It is not clear which of the Commission's Rules of Practice and Procedure remain applicable in a specific situation pertaining to a proceeding conducted pursuant to DIVCA.

145. The procedures adopted herein whereby DRA shall request reports from the Executive Director of the Commission are reasonable.

146. It is reasonable to require state video franchise holders to submit information to DRA when the information is necessary for DRA's advocacy and enforcement actions based upon Public Utilities Code §§ 5890, 5900, and 5950.

147. The procedures adopted herein concerning amendments to a state video franchise are reasonable.

148. It is not reasonable to adopt state video franchise renewal provisions at this time.

Conclusions of Law

1. Increasing competition for video broadband services is a matter of statewide concern.

2. DIVCA directs the Commission to issue state franchises for the provision of video services in California.

3. Pursuant to Public Utilities Code § 5810, DIVCA declares that a state video franchising process should:

- a. Create a fair and level playing field for all market competitors that does not disadvantage or advantage one service provider or technology over another.
- b. Promote the widespread access to the most technologically advanced cable and video services to all California communities in a nondiscriminatory manner regardless of socioeconomic status.
- c. Protect local government revenues and their control of public rights of way.
- d. Require market participants to comply with all applicable consumer protection laws.
- e. Complement efforts to increase investment in broadband infrastructure and close the digital divide.
- f. Continue access to and maintenance of the public, education, and government (PEG) channels.
- g. Maintain all existing authority of the California Public Utilities Commission as established in state and federal statutes.

4. DIVCA provides that the Commission is the “sole franchising authority” for issuing state video franchises. After January 2, 2008, the Commission is the only government entity that may grant a video service provider a franchise to operate within California.

5. Pursuant to DIVCA, video service providers are not public utilities and a holder of a state franchise shall not be deemed a public utility as a result of providing video service.

6. Pursuant to DIVCA, the Commission may not impose any requirement on any holder of a state franchise except as expressly provided by DIVCA.

7. DIVCA granted local entities, not the Commission, sole authority to regulate pursuant to many statutory provisions, including franchise fee provisions (§ 5860), PEG channel requirements (§ 5870), Emergency Alert System requirements imposed by the Federal Communications Commission (§ 5880), and, notably, federal and state customer service and protection standards (§ 5900).

8. Pursuant to DIVCA, the local entity is the lead agency for any environmental review with respect to network construction, installation, and maintenance in public rights-of-way (§§ 5820 and 5885).

9. It would not be consistent with DIVCA for the Commission to exercise its authority in a manner that diminishes the responsibilities afforded to local entities by DIVCA.

10. Pursuant to DIVCA, the Commission may promulgate rules only as necessary to enforce statutory provisions on franchising (§ 5840), anti-discrimination (§ 5890), reporting (§§ 5920 and 5960), cross-subsidization prohibitions (§§ 5940 and 5950), and regulatory fees (§ 401, §§ 440-444, § 5840).

11. It would not be consistent with DIVCA for the Commission to adopt regulatory proposals that fall outside the scope of the authority specifically assigned to the Commission under DIVCA.

12. An incumbent cable operator should not be considered an incumbent in areas outside of its franchise service areas as of January 1, 2007.

13. Section 5840(n) requires a state video franchise holder to notify the local entity that the video service provider will provide video service in the local entity's jurisdiction.

14. Pursuant to § 5930(b) when an incumbent cable operator is providing service under an expired franchise or a franchise that expires before January 2, 2008, the local entity may extend that franchise on the same terms and conditions through January 2, 2008.

15. It is consistent with DIVCA to require automatic extension of local video franchises that expire before January 2, 2008 if they are held by incumbent cable operators planning to seek state video franchises.

16. DIVCA seeks to create a fair and level playing field for all market competitors that does not disadvantage or advantage one service provider or technology over another.

17. Permitting incumbent cable operators to apply for state video franchises before expiration of their local franchises is consistent with DIVCA.

18. Public Utilities Code § 5840(e)(1)(B) recognizes that both "the applicant" ~~and~~or "its affiliates" must "comply with all federal and state statutes, rules, and regulations," which include provisions found in DIVCA.

19. To ensure enforcement of DIVCA ~~provisions cutting across communications sections~~, the Commission has the authority to require applicants to stipulate that it and all its wireline affiliates' California operations will be included for the purposes of applying Public Utilities Code §§ 5840, 5890, 5960, and 5940.

20. It is consistent with Public Utilities Code § 5840(f) to require an applicant to include a statement in its affidavit that it and all its wireline affiliates' California operations will be included for the purposes of applying Public Utilities Code §§ 5840, 5890, 5960, and 5940.

21. The restrictions on who may hold a state video franchise adopted herein are consistent with DIVCA.

22. Use of the definition of affiliate set forth in R.92-08-008 and contained herein, limited to wireline affiliates, is consistent with DIVCA and prior Commission precedent.

23. The definition of affiliate set forth herein, limited to wireline affiliates, is consistent with DIVCA's statutory scheme.

24. Pursuant to Public Utilities Code § 5840(e)(6), permitting franchise applicants to describe their proposed video service area footprint as a collection of census block groups, or as ~~a collection of blocks defined by~~ a geographic information system digital boundary meeting or exceeding national map accuracy standards is consistent with DIVCA.

25. Pursuant to Public Utilities Code § 5840(e)(6) and § 5840(e)(8), defining areas in the video service footprint as collections of touching census block groups or regions defined by geographic information system boundaries is consistent with DIVCA.

26. Pursuant to Public Utilities Code § 5840(e)(8), requiring a video franchise applicant to provide an expected date of deployment for each area in the video service footprint pursuant to the definition proposed herein is consistent with DIVCA. The resulting provision of an expected date of deployment for the entirety of each non-contiguous grouping or region included in its proposed video service footprint is consistent with DIVCA.

27. DIVCA does not provide the Commission the authority to impose the confidentiality restrictions on expected deployment data submitted in the video application that AT&T and Verizon have requested. Specifically, DIVCA does not give the Commission authority to impose confidentiality restrictions on local entities regarding expected deployment dates contained in the franchise application.

28. Requiring the submission of information on access and subscription to advanced communications services is consistent with DIVCA and its statutory purposes.

29. It is not consistent with DIVCA to require applicants to provide information in their application concerning the applicants' efforts over the last three years to help close the Digital Divide; fund access to new technology by underserved communities; demonstrate diversity at all levels of employment and management; demonstrate business opportunities created for small, minority-owned, and women-owned businesses; and provide full content access to underserved and minority communities because such a requirement is inconsistent with DIVCA's application process, which sets forth requirements with particularity and

strictly limits the Commission's role to determining whether the application is complete.

30. It is not consistent with DIVCA to require the reporting of services provided in languages other than English.

31. It is consistent with DIVCA to deem an application that contains an attestation that the applicant will submit socioeconomic data, including data on access and subscription to advanced communications services, as equivalent to an application that contains the data. Including such an attestation does not constitute grounds for deeming the application incomplete.

32. As amended pursuant to the discussion herein, the application form and the affidavits are consistent with DIVCA.

33. Public Utilities Code § 5840(e)(9) permits the Commission to require a bond to establish an applicant for a video franchise possesses the financial, legal, and technical qualifications necessary to construct and operate the proposed system and promptly repair any damage to the public right-of-way caused by the applicant.

34. California Public Utilities Code § 58940(e)(1)(C) tasks local entities with governing the "time, place and manner" of a state video franchise holder's use of the local rights-of-way.

35. DIVCA does not preclude local permits from requiring further security instruments to ensure that a state video franchise holder fulfills locally regulated obligations.

36. The requirement to name the Commission as an obligee of the bond and the requirement that the franchise ~~applicant~~holder ~~submit a copy of~~
~~the~~provide a copy of an executed bond ~~as part of the application to the~~

Executive Director within five (5) business days after receipt of a Certificate and prior to initiating video service is consistent with DIVCA.

37. DIVCA ~~g~~does not permit the submission of a financial statement in lieu of a bond to demonstrate that ~~an applicant~~ franchise holder is qualified to ~~hold a state~~provide video ~~franchises~~service.

38. An application fee of \$2,000 is consistent with DIVCA.

39. If the workload related to the application review process differs from current Commission estimates, the Commission has the statutory authority to revise its calculation of the application fee and change the fee.

40. DIVCA does not provide authority to collect fees for other Commission franchise actions.

41. Public Utilities Code § 5840 directs that the Commission's authority to oversee the state video franchise application process shall not exceed the provisions set forth in that section.

42. Public Utilities Code § 5840 provides the Commission with authority to evaluate whether a state video franchise is complete or incomplete. This is a purely ministerial role.

43. Public Utilities Code § 5840 provides that the Commission must inform an applicant of whether its state video franchise application is complete within thirty calendar days of receipt of its application.

44. DIVCA provides the Commission with no discretion over the substance or timing of its review of applications for a video franchise. The substance of the Commission's review is limited to the ministerial task of determining whether the application is complete.

45. DIVCA requires the Commission to issue a franchise when the application is complete before the 14th day after that finding.

46. The only stated ground for rejecting an application is incompleteness.

47. If an application is incomplete, the Commission must explain with particularity how and the applicant has an opportunity to amend the application to overcome the defects.

48. Public Utilities Code § 5840 does not provide for protests.

49. The protest of a ministerial act would be an idle act and could accomplish nothing.

50. DIVCA provides for a short review period for applications for a video franchise. The Commission must notify an applicant within thirty days if an application is complete.

51. The failure of the Commission to act on an application within 44 days of its receipt is deemed to constitute issuance of the certificate applied for and requires no further action on behalf of the applicant.

52. An amended application must be reviewed for completeness within thirty days of submission.

53. There is no statutory basis for TURN's assertion that DRA has a right to protest an application for a video franchise.

54. TURN and Joint Cities misconstrue DIVCA when they assert that Public Utilities Code § 5840(e)(1)(D) permits local entities to file protests. It only requires that local entities receive a copy of the application for a state franchise.

55. The requirement of a bond provides adequate assurance that an ~~applicant~~ franchise holder possesses the necessary qualifications for a video franchise.

56. Pursuant to Public Utilities Code § 5840(h), notification of the affected local entities of whether the applicant's application is complete or

incomplete and the particular items that are incomplete is consistent with DIVCA.

57. DIVCA establishes that no person or corporation shall be eligible for a new or renewed state video franchise if that person or corporation is in violation of any final nonappealable order relating to either the Cable Television and Video Providers Customer Service and Information Act or the Video Customer Service Act.

58. Pursuant to Public Utilities Code § 5840(b), a state video franchise holder must provide a local entity notice that it will begin offering service in the entity's jurisdiction. This notice of imminent market entry shall be given at least 10 days but no more than 60 days, before the video service provider begins to offer service.

59. Implicit in the incumbent cable operator's right to abrogate its franchise with the local entity is the assumption that an incumbent cable operator will know when a state video franchise holder provides notice of imminent market entry.

60. Pursuant to Public Utilities Code § 5810(a)(2)(A), the Commission should place all user fees into a subaccount of the Commission Utilities Reimbursement Account.

61. The user fees assessed by the Commission on video franchise holders are not "franchise fees" as defined by Section 542 of the Federal Communications Act.

62. Fees levied by the Commission pursuant to DIVCA are either fees of "general applicability" or fees incidental to the awarding or enforcing the franchise.

63. Pursuant to Public Utilities Code § 401(b), the user fee shall *produce enough, and only enough, revenues to fund the commission* with (1) its

authorized expenditures for each fiscal year to regulate . . . applicants and holders of a state franchise to be a video service provider, less the amount to be paid from special accounts except those established by this article, reimbursements, federal funds, and the unencumbered balance from the preceding year; (2) an appropriate reserve; and (3) any adjustment appropriated by the Legislature.

64. The user fee should include funding for DRA, whose budget is included in the Commission budget.

65. Pursuant to Public Utilities Code § 5810(a)(3), the collection of any fees from video franchise holders in the same manner and under the same terms as it collects fees from public utilities is consistent with DIVCA.

66. Pursuant to California Public Utilities Code § 5810(a)(3), any user fees levied by the Commission should not discriminate against video service providers or their subscribers.

67. Pursuant to Public Utilities Code §442(e), the Commission should issue refunds if it collects a fee in error.

68. The methodology and procedures for assessing a user fee for Fiscal Year 2007-2008 are consistent with DIVCA.

69. The methodology and procedures for assessing a user fees for Fiscal Years following Fiscal Year 2007-2008 are consistent with DIVCA.

70. Pursuant to Public Utilities Code § 443(a), the Commission has the authority to require a video service provider to furnish information and reports needed to assess a user fee.

71. Public Utilities Code § 5920 imposes specific employment reporting requirements that direct state video franchise holders with more than 750 California employees to report upon the number and types of jobs held by their employees in California.

72. Pursuant to Public Utilities Code § 5920, state video franchise holders must provide projections of new hires expected during an upcoming year.

73. Granting confidential treatment to employment data provided pursuant to DIVCA would violate the express language of Public Utilities Code § 5920(b), which requires the Commission to make the employment data available to the public on its Internet Web site.

74. Pursuant to Public Utilities Code § 5960, state video franchise holders must submit detailed annual reports on broadband and video services.

75. The reporting requirements pertaining to broadband and video services adopted in General Order XX are consistent with DIVCA and fulfill a variety of statutory purposes. In addition to enabling the Commission to monitor build-out, the reports can enable the Commission to support voluntary efforts to increase broadband adoption.

76. The procedures for reporting information on video availability contained in General Order XX, including the reporting methodology contained in Appendix D, are consistent with the provisions of DIVCA.

77. The procedures for reporting subscribership data contained in General Order XX and discussed herein are consistent with the provisions of DIVCA.

78. Pursuant to Public Utilities Code § 5960(B)(1)(A), a state video franchise holder may elect to approximate data reported on a census tract basis only if the state video franchise holder (i) “does not maintain this information on a census tract basis in its normal course of business” and (ii) the alternate reporting methodology “reasonably approximate[s]” census tract data.

79. Pursuant to Pursuant to Public Utilities Code § 5960(d), annual broadband and video data reported to the Commission shall be disclosed to the public only as provided for pursuant to Public Utilities Code § 583.

80. Scaling back broadband reporting requirements, as proposed by AT&T, contravenes the principles underlying DIVCA, including its goals to promote the widespread access to the most technologically advanced cable and video services to all California communities and to complement efforts to increase investment in broadband infrastructure.

81. Requiring further broadband reporting requirements, as proposed by CCTPG/LIF, lacks a statutory basis. CCTPG/LIF does not establish that this data is necessary for our enforcement of specific DIVCA provisions.

82. Requiring the reporting of low-income household information as of January 1, 2007 is consistent with the definition of low-income household found in Public Utilities Code § 5890(j)(2).

83. Public Utilities Code § 5890(b) establishes low-income build out requirements that are benchmarked upon household income as of January 1, 2007.

84. The reporting requirements pertaining to the provision of free service to community centers, adopted herein, are consistent with the enforcement of specific DIVCA provisions

Pursuant to Public Utilities Code § 5890(b)(3), the community center reporting requirement should apply to state video franchise holders with more than one million telephone subscribers.

85. The submission of information pertaining to employment, such as CUDC information or EEO-1 forms, is consistent with DIVCA's interest in tracking new employment.

86. Pursuant to Public Utilities Code § 5890, the Legislature required certain state video franchise holders to offer video service to California consumers within predetermined time periods.

87. Build-out provisions in subsections (b)(1)-(2) and (e) of Public Utilities Code § 5890 clearly require the holders of a video franchise with more than one million telephone customers to (i) offer service to a certain percentage of households in their telephone service areas in a designated time period, depending on the technology used by the holders and (ii) ensure that a certain percentage of households offered video access are “low-income households.”

88. Public Utilities Code § 5890(j)(2) defines a low-income household as one with an annual household income of less than \$35,000.

89. Pursuant to Public Utilities Code § 5890(b)(3), the holders of a video franchise with more than one million telephone customers must provide free service to community centers at the ratio of one per community center per 10,000 customers.

90. Pursuant to Public Utilities Code § 5890(b)(3), a community center eligible for free service must be a facility that (i) qualifies for the California Teleconnect Fund, (ii) makes the state video franchise holder’s service available to the community, and (iii) only receives service from one state video franchise holder at a time.

91. The build-out requirements adopted herein that pertain to state video franchise holders or their affiliates with more than one million telephone customers are consistent with DIVCA.

92. Pursuant to DIVCA, the design of build-out requirements that pertain to franchise holders or their affiliates with less than one million telephone customers is a fact-specific endeavor.

93. The procedures adopted herein for determining the build-out requirements that pertain to state video franchise holders or their affiliates with less than one million telephone customers are consistent with DIVCA.

94. Pursuant to Public Utilities Code § 5890(d), when “a holder provides video service outside of its telephone service area, is not a telephone corporation, or offers video service in an area where no other video service is being offered, other than direct-to home satellite service, there is a rebuttable presumption that discrimination in providing service has not occurred within those areas.

95. If not rebutted, the existence of any one of the three factors listed in the prior ~~Finding of Fact~~ Conclusion of Law is sufficient to prove that a state video franchise holder is not discriminating in its provision of video service.

96. It is consistent with Public Utilities Code § 5890(d), which applies non-discrimination provisions to a “holder” rather than an “applicant,” that the Commission’s review of the anti-discrimination and build-out provisions take place after a state video franchise is awarded.

97. Pursuant to Public Utilities Code § 5890(g), local governments may bring complaints concerning discrimination to the Commission for resolution and the Commission itself may open investigations on discrimination matters.

98. Public Utilities Code § 5890(e)(2)-(3) establishes automatic extensions for build-out requirements imposed by Public Utilities Code § 5890(e)(1)-(2). These extensions go into effect if a significant percentage of households fail to subscribe to a state video franchise holder’s service.

99. Public Utilities Code § 5890(f) affords the Commission discretionary authority to grant an extension for the build-out requirements imposed in subsections (b), (c), and (e).

100. The procedures adopted in General Order XX to extend build-out deadlines are consistent with DIVCA.

101. Pursuant to Public Utilities Code § 5890(g), we conclude that the Commission may suspend or revoke a state video franchise if it finds any of the following: (a) The state video franchise holder has failed to comply with any demand, ruling, or requirement of the Commission made pursuant to and within the authority of Division 2.5; (b) The state video franchise holder has violated any provision of Division 2.5 or any rule or regulation made by the Commission under and within the authority of this division; or (c) A fact or condition exists that, if it had existed at the time of the original application for the state franchise (or transfer thereof), reasonably would have warranted the Commission's refusal to issue the state video franchise originally (or grant the transfer thereof).

102. DIVCA expressly limits the Commission's use of enforcement actions, such as investigations.

103. Pursuant to DIVCA, the Commission may impose a fine only when a state video franchise holder is in violation of user fee or antidiscrimination/build-out provisions.

104. Pursuant to Public Utilities Code § 5890, the Commission is given authority to address local entities' formal complaints based on DIVCA only when the complaints arise under Public Utilities Code § 5890.

105. It is consistent with DIVCA for the Commission to limit its initiation of investigations to those situations where DIVCA explicitly assigns the Commission authority to regulate.

106. Pursuant to Public Utilities Code § ~~5890(g)~~ 5810(2)(G), the Commission has the flexibility to determine which type of public hearing could best develop the record needed for deciding an individual matter.

107. Pursuant to ~~(i) our general enforcement powers in Public Utilities Code § 5890(g) and (ii)~~ our specific authority to administer the state video franchise application process pursuant to Public Utilities Code § 5840, the Commission has the authority to investigate allegations that a fact or condition exists that, if it had existed at the time of the original application for the state video franchise (or transfer or amendment thereof), reasonably would have warranted the Commission's refusal to issue the state video franchise originally (or grant the transfer or amendment thereof).

108. Pursuant to ~~Public Utilities Code § 5890(g)~~ our specific authority to administer the state video franchise application process pursuant to Public Utilities Code § 5840, the Commission may open an investigation to determine whether an applicant failed to comply with DIVCA franchising provisions.

109. It is consistent with DIVCA to require that any investigation to determine whether an applicant failed to comply with DIVCA franchising provisions follow standard Commission ~~proceedings~~ procedures for the initiation of an investigation. These procedures include a majority vote of the Commission on an order initiating the investigation that either contains a report or the declarations of Commission witnesses pertaining to facts that demonstrate an investigation ~~of Public Utilities Code § 5890 compliance~~ is warranted.

110. Pursuant to DIVCA, formal investigation of antidiscrimination and build-out compliance may be launched in two ways: (i) in response to

a complaint filed by a local government, or (ii) on the Commission's own motion.

111. The procedures and requirements discussed herein concerning complaints filed by local governments alleging the failure of a state video franchise holder to comply with the provisions of Public Utilities Code § 5890 concerning the anti-discrimination and build-out requirements are consistent with DIVCA.

112. The procedures and requirements discussed herein concerning investigations initiated by the Commission alleging the failure of a state video franchise holder to comply with the provisions of Public Utilities Code § 5890 concerning the anti-discrimination and build-out requirements are consistent with DIVCA.

113. The failure to comply with the anti-discrimination and build-provision of Public Utilities Code § 5890 may subject the franchisee to multiple penalties, including fines, suspension of a video franchise, and/or revocation of a video franchise.

114. Pursuant to DIVCA, it is unlawful for any applicant or state video franchise holder willfully to make any untrue statement of a material fact in any application, notice, or report filed with the Commission.

115. Pursuant to DIVCA, it is unlawful for any applicant or state video franchise holder willfully to omit to state in any such application, notice, or report any material fact that is required to be stated by DIVCA.

116. Consistent with DIVCA, a formal investigation into compliance with reporting requirements may be launched ~~(i) on the Commission's own motion or (ii) initiated in response to a complaint filed by a local government if the reporting requirement at issue is used to monitor compliance with Public Utilities Code § 5890.~~

117. Pursuant to Public Utilities Code § 444(a), the Commission may impose a penalty for failure to provide financial reports required by the Commission. In particular, the Commission may assess a penalty not to exceed 25 percent of the amount of a state video franchise holder's estimated user fee, on account of the failure, refusal, or neglect to prepare and submit the report required by Public Utilities Code § 443.

118. Pursuant to DIVCA, the Commission may fine a state video franchise holder if it fails to provide accurate reports needed to enforce anti-discrimination and build-out provisions.

~~119. The authority to impose penalties pursuant to Public Utilities Code § 5890(g) flows to instances where a state video franchise holder misstates or omits information required by Public Utilities Code § 5960.~~

120. Current federal and state law subject California telecommunications companies to a variety of measures designed to prevent unlawful cross-subsidization between telecommunications costs and non-telecommunications costs.

121. As discussed herein, the Commission has ample authority to investigate allegations of unlawful cross-subsidization.

122. Pursuant to Public Utilities Code § 5950, the Commission prohibits incumbent local exchange carriers that obtain a state video franchise from changing any rate for basic telephone service until January 1, 2009, unless the incumbent is subject to rate-of-return regulation.

123. The procedures discussed herein for investigation and sanctioning of the unlawful cross-subsidization of video services are consistent with DIVCA.

124. The procedures contained in GO XX for enforcing the submission of user fees are consistent with DIVCA.

125. DIVCA explicitly empowers local entities to enforce its consumer protection provisions.

126. DIVCA limits the Commission's role in enforcement of consumer protection provisions.

127. The procedures discussed herein in determining whether to initiate a proceeding to determine whether a pattern and practice of violating consumer protection laws warrants suspension or revocation of a video franchise are consistent with DIVCA.

128. It is necessary to ensure that the Commission's Rules of Practice and Procedure are consistent with DIVCA.

129. DIVCA limits DRA's role to advocacy and enforcement actions related to Public Utilities Code §§ 5890, 5900, and 5950.

130. DIVCA provides that DRA may have access to information in the Commission's possession "for this purpose" of enforcing the Code sections listed in the preceding Conclusion of Law.

131. The procedures adopted herein whereby DRA shall request reports from the Executive Director of the Commission are consistent with DIVCA.

132. DIVCA does not permit the Commission to order a grant of intervenor compensation.

133. The procedures adopted herein concerning amendments to a video franchise are consistent with DIVCA.

134. Federal and state law may change between now and 2017, the earliest a state video franchise may be renewed.

O R D E R

IT IS ORDERED that:

1. A franchisee shall not allow its bond to lapse during any period of its operation pursuant to a state video franchise.
2. The Executive Director shall provide notice of incompleteness and the specific reason for incompleteness in the same document and shall provide this notice both to the franchise applicant and to affected local entities.
3. The Executive Director shall provide notice of statutory ineligibility, when known, to the applicant for a state franchise.
4. A state video franchise holder shall provide a local entity and affected incumbent cable operators notice that it will begin offering service in the entity's jurisdiction. This notice of imminent market entry shall be given at least 10 days but no more than 60 days, before the video service provider begins to offer service.
5. The Executive Director shall place all video franchise holder's fee payments into a subaccount of the Commission's Utilities Reimbursement Account.
6. The Commission shall annually determine the fee to be paid by each state video franchise holder pursuant to the methodology and procedures discussed herein.
7. The Commission shall refund any user fee collected in error.
8. Video franchise holders shall provide the Commission with the reports and information needed to assess annual user fees according to the method and schedule discussed herein.
9. The General Order XX attached to this decision is hereby adopted.

10. Applicants for a state video franchise and state video franchise holders shall follow the procedures and comply with the requirements of General Order XX

11. When the Commission receives a pre-application for a state video franchise by an applicant that alone or with its affiliates has less than one million telephone customers (pursuant to General Order XX), the Commission shall either open a new phase of this proceeding to determine build-out requirements or open a new proceeding for this purpose.

12. The Commission shall provide for a public hearing in any proceeding where a holder seeks an extension of time to comply with § 5890 (b), (c), or (e); or where a complaint is brought by a local government, or an investigation is opened by the Commission, regarding whether a holder is offering video service as required by § 5890. ~~franchising; anti-discrimination and build-out; reporting; cross-subsidization; or user fee provisions are at issue.~~

13. Any investigation initiated by the Commission to determine whether an applicant failed to comply with DIVCA franchising provisions shall follow standard Commission proceedings for the initiation of an investigation. These procedures include, among other things, a majority vote of the Commission on an order initiating the investigation that either contains a report or the declarations of Commission witnesses pertaining to facts that demonstrate an investigation of Public Utilities Code § 5840 compliance is warranted. Such an investigation should proceed in the manner discussed herein, including public hearings where required. The Commission may let interested parties participate in the investigation and hearing process.

14. Any complaint by a local government alleging that a state video franchise holder has failed to meet the anti-discrimination and build-out requirements of Public Utilities Code § 5890 shall include sworn declarations pertaining to the facts that the local government believes demonstrate a failure to fulfill obligations imposed by Public Utilities Code § 5890. In addition, the local entity filing a complaint shall clearly identify that the complaint pertains to a failure to meet an obligation imposed by Public Utilities Code § 5890.

15. Any investigation initiated by the Commission alleging that a state video franchise holder has failed to meet the anti-discrimination and build-out requirements of Public Utilities Code § 5890 shall include sworn declarations pertaining to the facts that the local government believes demonstrate a failure to fulfill obligations imposed by Public Utilities Code § 5890. In addition, the order instituting the investigation shall clearly identify that the complaint pertains to a failure to meet an obligation imposed by Public Utilities Code § 5890. Such an investigation should proceed in the manner discussed herein, including public hearings where required. The Commission shall let interested parties participate in the investigation and hearing process of a proceeding concerning Public Utilities Code § 5890.

16. Any investigation into allegations that a state video franchise holder has failed to meet the reporting requirements of DIVCA shall follow the procedures discussed herein.

17. Any investigation into allegations that a state video franchise holder has violated the provisions of DIVCA prohibiting cross-subsidization of video service shall follow the procedures discussed herein.

18. Any investigation into allegations that a state video franchise holder has violated the user fees requirements of DIVCA shall follow the procedures used in enforcing other DIVCA provisions regulated by the Commission.

19. The Commission shall follow the procedures discussed herein in determining whether to initiate a proceeding to determine whether a pattern and practice of violating DIVCA provisions that are subject to local entities' regulation warrants suspension or revocation of a video franchise. In conducting this legal proceeding, the Commission shall not consider the merits of alleged material breaches de novo. Instead, the Commission shall only consider whether enforcement actions and penalties assessed by a local entity were either uncontested or sustained by courts and whether these enforcement actions and penalties rise to a level such that state video franchise suspension or revocation is warranted.

20. Phase II of this proceeding shall determine which of the Commission's Rules of Practice and Procedure remain applicable in proceedings conducted pursuant to DIVCA.

21. In a dispute involving DRA pertaining to access to a report required by DIVCA, the Commission shall resolve the dispute using the procedures described herein and pursuant to Resolution ALJ 195.

22. The Commission shall not consider any protest to a franchise application.

23. No party shall be awarded intervenor compensation in a proceeding concerning DIVCA.

24. Phase II of this proceeding will address renewal issues to the extent possible at the time of the proceeding.

Appendix B

General Order XXX Implementing The Digital Infrastructure and Video Competition Act of 2006 (DIVCA)

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Appendix A Application

Appendix B Video Franchise Certificate

I. Definitions

- A. “Affiliate” means any company 5 per cent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a state video franchise holder or any of its subsidiaries, or by that state video franchise holder’s controlling corporation and/or any of its subsidiaries as well as any company in which the state video franchise holder, its controlling corporation, or any of the state video franchise holder’s affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership.
- B. “Applicant” means any person or entity that files an Application seeking to provide Video Service in the state pursuant to a State Video Franchise.
- C. “Application” means the form prescribed by the Commission for seeking a grant or amendment of a State Video Franchise.
- D. “Application Fee” means any fee that the Commission imposes to recover its actual and reasonable costs of processing an Application.¹
- E. “Broadband” or “Broadband Service” means any service defined as broadband, ~~or having advanced telecommunications capability,~~ in the most recent Federal Communications Commission inquiry pursuant to Section 706 of the Telecommunications Act of 1996 (P.L. 104-104).²

¹ CAL. PUB. UTIL. CODE § 5840(c). This fee is not levied for general revenue purposes, consistent with Public Utilities Code § 5840(c).

² Id. at § 5830(a). The Federal Communications Commission currently uses the term “broadband” and “advanced telecommunications capability” to describe services and facilities with an upstream (customer-to-provider) and downstream (provider-to-customer) transmission speed of more than 200 kilobits per second. FEDERAL COMMUNICATIONS COMMISSION, AVAILABILITY OF ADVANCED TELECOMMUNICATIONS CAPABILITY IN THE UNITED STATES, FOURTH REPORT TO CONGRESS, FCC 04-208, 10 (Sept. 9,

- F. "Census Tract" has the same meaning as used by the U.S. Census Bureau.³
- G. "Commission" means the Public Utilities Commission.
- H. "Community Center" means any facility run by an organization that has qualified for the California Teleconnect Fund, as established in Public Utilities Code § 280, and that will make the State Video Franchise Holder's service available to the community.⁴
- I. "DIVCA" means the Digital Infrastructure and Video Competition Act of 2006 (Ch. 700, Stats. 2006).⁵
- J. "DRA" means the Division of Ratepayer Advocates.
- K. "Effective Date of this General Order" means January 2, 2007 or the date when this Order is adopted, whichever is later.
- L. "Household" means, consistent with the U.S. Census Bureau, a house, apartment, a mobile home, a group of rooms, or a single room that is intended for occupancy as separate living quarters.⁶ Separate living quarters are those in which the occupants live and eat separately from any other persons in building and which have direct access from the outside of the building or through a common hall.⁷
- M. "Incumbent Cable Operator" means a cable operator or open-video system serving subscribers under a franchise in

2004). This definition, however, is under review by the Commission, and it may evolve in response to rapid technological changes in the marketplace. Id.

³ CAL. PUB. UTIL. CODE at § 5960(a).

⁴ Id. at § 5890(b)(3).

⁵ In this General Order, all further references to Public Utilities Code are to those sections adopted or amended in DIVCA.

⁶ Id. at § 5890(j)(1).

⁷ Id.

a particular city, county, or city and county franchise area on January 1, 2007.⁸

- N. “Local Entity” means any city, county, city and county, or joint powers authority within the state within whose jurisdiction a State Video Franchise Holder may provide Video Service.⁹
- O. “Low-Income Household” means a residential Household where the average annual Household income is less than \$35,000, as based on U.S. Census Bureau estimates adjusted annually to reflect rates of change and distribution through January 1, 2007.¹⁰
- P. “State Video Franchise” means a franchise issued pursuant to DIVCA.¹¹
- Q. “State Video Franchise Holder” means a person or group of persons that has been issued a State Video Franchise from the Commission pursuant to Division 2.5 of DIVCA.¹²
- R. “Telephone Service Area” means the area where the Commission has granted an entity a Certificate of Public Convenience and Necessity to provide telephone service.
- S. “Telephone Corporation” means a telephone corporation as defined in Public Utilities Code § 234.
- T. “User Fee” means the fee paid to the Commission quarterly by each Holder pursuant to Public Utilities Code § 442(a).
- U. “Video Service” means video programming services, cable service, or open-video system service provided through facilities located at least in part in public rights-of-way

⁸ Id. at § 5830(j).

⁹ Id. at § 5830(k).

¹⁰ Id. at § 5890(j)(2) (defining “low-income households” for the purposes of imposing build-out requirements).

¹¹ Id. at § 5830(p).

¹² Id. at § 5830(i).

without regard to delivery technology, including Internet protocol or other technology. This definition does not include (1) any video programming provided by a commercial mobile service provider defined in Section 322(d) of Title 47 of the United States Code, or (2) video programming provided as part of, and via, a service that enables users to access content, information, electronic mail, or other services offered over the public Internet.¹³

- V. “Video Service Area” means the area proposed to be served under a State Video Franchise.
- W. “Video Service Provider” means any entity providing Video Service.¹⁴

II. Purpose of the General Order

The purpose of this General Order is to promulgate the rules necessary to implement Assembly Bill (AB) 2987, the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), which was signed into law by Governor Arnold Schwarzenegger on September 29, 2006. In enacting this Order, we remain mindful of the fact that the Legislature intends for the state video franchising process to achieve the following objectives:

- A. Create a fair and level playing field for all market participants that does not disadvantage or advantage one service provider or technology over another;
- B. Promote the widespread access to the most technologically advanced cable and video services to all California communities in a nondiscriminatory manner, regardless of their socioeconomic status;
- C. Protect local government revenues and control of public rights-of-way;
- D. Require Video Service Providers to comply with all applicable consumer protection laws;

¹³ Id. at § 5830(s).

¹⁴ Id. at § 5830(t).

- E. Complement efforts to increase investment in Broadband infrastructure and close the digital divide;
- F. Continue access to and maintenance of public, education, and government (PEG) channels; and
- G. Maintain all existing authority of the Commission as established by state and federal statutes.¹⁵

This Commission will act to bring these intended economic and social benefits of Video Service competition to California.

We also recognize that the Legislature found that the public interest is best served when sufficient funds are appropriated to the Commission to provide adequate staff and resources to appropriately and timely process applications of Video Service Providers and to ensure full compliance with the requirements of Division 2.5 of the Public Utilities Code.¹⁶ Accordingly, the General Order assesses fees that will ensure that our video franchising operations are adequately funded and staffed.

III. When Various Applicants Can/Must Apply for a State Video Franchise

A. The Commission's Role in Processing Applications

The Commission shall begin accepting Applications for State Video Franchises on the Effective Date of this General Order.¹⁷ Between the Effective Date of this General Order and January 1, 2008, persons wishing to offer Video Service in an area where a local franchise has not already been granted to that person may seek a State Video Franchise from the Commission or a local franchise from the local franchising authority.

After January 1, 2008, the Commission shall be the sole franchising authority for new Video Service franchises in the state of California.¹⁸

¹⁵ CAL. PUB. UTIL. CODE §§ 5810(2)(A)-(G).

¹⁶ Id. at § 401(a).

¹⁷ See id. at § 5840(g) (ordering the Commission to commence accepting Applications for a State Video Franchise no later than April 1, 2007).

¹⁸ Id. at §§ 5840(c),(g).

After January 1, 2008, any person or corporation that seeks to provide Video Service for which a franchise has not already been issued shall file an Application for a State Video Franchise with the Commission.¹⁹

B. Applications for New Franchises

To facilitate Commission design of build-out requirements, any Applicant that alone or together with its wireline Affiliates has fewer than 1,000,000 telephone customers shall provide the Commission written notice of its intent to apply for a State Video Franchise within three months of its expected Application date.

An Applicant shall not be considered an “Incumbent Cable Operator” for the purpose of an Application if the Application is for an area in which the Applicant did not have a local franchise granted as of January 1, 2007.

Applications for State Video Franchise in areas where a franchise has not already been granted to that Applicant may be submitted on or after the Effective Date of this General Order.²⁰

C. Applicants with Existing Franchises

1. Eligibility Conditions

Incumbent Cable Operators are not eligible to apply for a State Video Franchise for the same service area covered by their local franchise unless at least one of the following three conditions applies: (i) the local franchise expires prior to its renewal or extension; (ii) the Applicant and the local franchising authority mutually agree to terminate the local franchise, and submit their agreement in writing to the Commission; or (iii) a Video Service or cable provider with a State Video Franchise notifies the Local Entity and Incumbent Cable Operators of its intent to begin offering Video Service in all or part of the Local Entity’s jurisdiction.²¹

2. Franchise Effectiveness Date

In no case shall a State Video Franchise issued to an Incumbent Cable Operator for a service area in which it has an existing local franchise become

¹⁹ Id. at § 5840(c).

²⁰ Id. at § 5840(g).

²¹ Id. at § 5840(o).

effective prior to January 2, 2008.²² Prior to January 2, 2008, an Incumbent Cable Operator with an expired or expiring franchise may choose to renew the local franchise or seek a State Video Franchise. If an Incumbent Cable Operator's franchise expires before January 2, 2008, it can apply for a State Video Franchise that begins on January 2, 2008. If a State Video Franchise is sought, the local franchise shall be extended under its existing terms until the State Video Franchise is effective.²³

3. Terms of Service Offered

An Incumbent Cable Operator that chooses to replace its local franchise with a State Video Franchise shall continue to serve all areas as required by its local franchise agreement existing on January 1, 2007, until that local franchise otherwise would, under its terms, have expired.²⁴

An Incumbent Cable Operator that is also a Telephone Corporation with less than 1,000,000 telephone customers in California and is providing video service in competition with another Incumbent Cable Operator shall be required to continue providing Video Service only in the areas in which it provided Video Service as of January 1, 2007.²⁵

4. Effect of a New Competitor's Entry into a Video Market

When a Video Service Provider that holds a State Video Franchise provides the notice required pursuant to Public Utilities Code § 5840(m) to a Local Entity, the Local Entity may require Incumbent Cable Operators to seek a State Video Franchise.²⁶ The Local Entity shall terminate the local franchise when the Commission issues a State Video Franchise to the Video Service Provider that includes the entire service area served by the Video Service Provider and the Video Service Provider gives notice to the Local Entity that it will begin providing service in that area under a State Video Franchise.

²² Id. at § 5930(b).

²³ Id. at § 5930(b).

²⁴ Id. at § 5840(p).

²⁵ Id. at § 5840(p).

²⁶ Id. at § 5930(c).

5. Exception for a Party to a Stipulation and Consent Judgment Approved by a Federal District Court

Any Video Service Provider that currently holds a franchise with a local franchising entity in a county that is a party, either alone or in conjunction with any other local franchising entity located in that county, to a stipulation and consent judgment executed by the parties thereto and approved by a federal district court shall neither be entitled to seek a State Video Franchise in any area of that county, including any unincorporated area and any incorporated city of that county, nor abrogate any existing franchise before July 1, 2014. Prior to July 1, 2014, the Video Service Provider shall continue to be exclusively governed by any existing franchise with a local franchising entity for the term of that franchise and any and all issues relating to renewal, transfer, or otherwise in relation to that franchise shall be resolved pursuant to that existing franchise and otherwise applicable federal and local law. This rule shall not be deemed to extend any existing franchise beyond its term.²⁷

IV. Application Process for a State Video Franchise

A. Steps for Obtaining a State Video Franchise

1. Step 1: Complete the Application for a State Video Franchise²⁸ (Appendix A to the General Order)

The Application shall include all information required by Public Utilities Code § 5840(e), as well as information required to ascertain an Applicant's eligibility requirements, as described in Public Utilities Code §§ 5840(c), 5840(d), 5840(f), 5840(o), 5840(p), 5930(a), 5930(b), and 5930(c).

a) Adequate Assurance of Financial, Legal, and Technical Qualifications

An Applicant is required to provide adequate assurance that it possesses the financial, legal, and technical qualifications necessary to construct and operate the proposed system and promptly repair any damage to the public right-of-way caused by the Applicant.²⁹ To meet this requirement, the ~~Applicant Franchise~~

²⁷ Id. at § 5930(a).

²⁸ Id. at § 5840(e).

²⁹ Id. at § 5840(e)(9).

Holder shall submit a copy of a fully executed bond in the amount of \$100,000 per 20,000 households in its proposed video service area to the Executive Director within five (5) business days after receipt of a Certificate and prior to initiating video service. The amount of the bond under any circumstances shall not be less than \$100,000 or more than \$500,000. The bond shall list the Commission as obligee and be issued by a corporate surety authorized to transact a surety business in California.

b) Application Fee

Upon filing its initial Application, an Applicant is required to pay an Application Fee in the amount of \$2,000 to the Commission. This fee does not exceed the actual and reasonable costs of processing an Application.³⁰

2. Step 2: Application Submission Requirements

a) Submit Completed Application to the Commission³¹

The Commission requires all Applicants to submit Applications in the format – paper or electronic – that the Commission directs. In all cases, the Applicant must complete the attached affidavit, submitting one paper original and one paper copy to the Commission’s Docket Office.

b) Concurrently Deliver a Copy of the Application to the Affected Local Entity

An Applicant shall concurrently deliver a copy of its Application to the appropriate contact person for each Local Entity where the Applicant will provide service.³² Delivery may be accomplished by serving the document as provided in Commission Rules of Practice and Procedure 1.9 or 1.10.

³⁰ Id. at § 5840(c).

³¹ Id. at § 5840(a).

³² Id. at § 5840(e)(1)(D).

3. Step 3: Commission Review of the Application for Completeness

The Commission shall review the Application and determine whether the Application is complete or incomplete before the thirtieth calendar day after the Applicant submits the Application.³³

4. Step 4: Notification Regarding Application Status

The Commission, acting through the Executive Director, shall notify the Applicant and affected Local Entities³⁴ as to whether the Application is complete or incomplete before the thirtieth calendar day after the Applicant submits the Application.³⁵

The Commission's notice of a complete Application will include notification that the Commission shall issue a State Video Franchise before the fourteenth calendar day after the determination of completeness was made.³⁶

The Commission's notice of an incomplete Application to Applicants and affected Local Entities will include a statement specifying with particularity which items are incomplete and a statement permitting the Applicant to amend the Application.³⁷ There is no fee associated with such amendments.

The Commission shall have 30 calendar days from the date an incomplete Application is amended and submitted to the Commission to determine its completeness.³⁸

Notice of complete and incomplete amended Applications and review of subsequent incomplete amended Applications shall follow the procedures outlined in Steps 3 and 4 above.

³³ Id. at § 5840(h)(1).

³⁴ The Commission will use the local authority contact information provided by the Applicant in the Application.

³⁵ CAL. PUB. UTIL. CODE § 5840(h)(1).

³⁶ Id. at § 5840(h)(2) ("If the commission finds the Application is complete, it shall issue a state franchise before the 14th calendar day after that finding.").

³⁷ Id. at § 5840(h)(3).

³⁸ Id.

If an Applicant is statutorily ineligible for a State Issued Franchise, the Commission will notify the Applicant and any affected Local Entities of the reasons for the Applicant's ineligibility.

5. Step 5: State Video Franchise Issued for Complete Applications

The Commission, acting through the Executive Director, shall issue a State Video Franchise to the Applicant before the fourteenth calendar day after its determination that an Application is complete.³⁹ The form used to issue a State Video Franchise is found in Appendix B of the General Order.

B. Failure of Commission to Act on Application

If the Commission fails to notify the Applicant of the completeness or incompleteness of the Applicant's Application before the forty-fourth calendar day after receipt of an Application, the Commission's inaction shall be deemed to constitute issuance of the State Video Franchise, with no further action required on behalf of the Applicant.⁴⁰

A California State Video Franchise, however, is not deemed granted due to Commission failure to act when Applicant is statutorily ineligible for the State Video Franchise, pursuant to the requirements of §§ 5840(c), 5840(d), 5840(o), 5930(a), 5930(b), and 5930(c).

The Commission will notify an Applicant of any specific ground for ineligibility so that any condition of ineligibility may be remedied.

C. Protests to State Video Franchise Applications Disallowed

No person or entity may file a protest to an Application.

V. Ineligibility of Entities in Violation of the Cable Television and Video Providers Service and Information Act or the Video Customer Service Act

No person or corporation shall be eligible for a State Video Franchise, including a State Video Franchise obtained from transfer of an existing State Video Franchise, if that person or corporation is in violation of any final nonappealable order relating to either the Cable Television and Video Providers

³⁹ Id. at § 5840(h)(2).

⁴⁰ Id. at § 5840(h)(4).

Customer Service and Information Act (Cal. Govt. Code §§ 53054 et seq.) or the Video Customer Service Act (Cal. Govt. Code §§ 53088 et seq.).⁴¹

VI. The State Video Franchise – Authorization to Offer Service, Obligations, Amendment, Transfer, Voluntary Termination, and Miscellaneous Changes

A. Authorization to Offer Service

1. Grants of Authority

It is unlawful to provide Video Service without a state or locally issued franchise.⁴² The issuance of a State Video Franchise represents the Commission's determination that an Applicant has satisfied the statutory requirements pursuant to DIVCA to offer Video Service. The document in which the Commission memorializes the issuance of a State Video Franchise serves as proof of the Commission's grant of authority to provide Video Service, but does not itself constitute authority to offer Video Service.

Each State Video Franchise issued by the Commission includes (1) a grant of authority to provide Video Service in the Video Service Area as requested in the Application; (2) a grant of authority, in exchange for the franchise fee adopted under Public Utilities Code Section 5840(q), to use the public rights-of-way for the delivery of Video Service subject to the laws of California; and (3) a statement that the grant of the authority is subject to the lawful operation of the Video Service by the Applicant or its successor-in-interest.⁴³

2. Duration of a State Video Franchise

A State Video Franchise is effective for ten years after the date of its issuance.⁴⁴

B. State Video Franchise Obligations

1. Obligations Imposed by Statute

State Video Franchise Holders are required to comply with all federal and state statutes, rules, and regulations. All California operations of a State Video

⁴¹ CAL. PUB. UTIL. CODE § 5840(d).

⁴² Id. at § 5840(k).

⁴³ Id. at § 5840(i).

⁴⁴ Id. at § 5850(a).

Franchise Holder and its wireline Affiliates shall be included for the purposes of applying Public Utilities Code §§ 5840, 5890, 5960, and 5940.

2. Enforcement of Obligations

A State Video Franchise is subject to suspension or revocation if a Video Service Provider fails to comply with the applicable requirements of Division 2.5 the Public Utilities Code.⁴⁵ In addition, the Commission shall not renew a State Video Franchise if the State Video Franchise Holder is in violation of any final nonappealable court order issued pursuant to Division 2.5 of the Public Utilities Code.⁴⁶

C. Amending a State Video Franchise

A State Video Franchise Holder may amend a State Video Franchise in order to reflect changes to its Video Service Area.⁴⁷

1. Fee for Amending a State Video Franchise

There is no fee associated with such amendments to reflect changes in service territory, but in general, the Commission's amendment process tracks the State Video Franchise Application process as set forth below.⁴⁸

2. Procedures for Filing a Supplemental Application

A State Video Franchise Holder seeking a Video Service Area amendment (whether an increase or decrease) shall file a supplemental Application to its initial Application that clearly shows the new boundaries of the affected service areas,⁴⁹ describes any and all Local Entities impacted by the new service area, and further amends all sections of the prior Application affected by the change in service territory or other factors. This supplemental Application shall be numbered sequentially in the document title, starting with the first supplemental Application filed by a State Video Franchise Holder.

⁴⁵ Id. at § 5890(g).

⁴⁶ Id. at § 5850 (d).

⁴⁷ Id. at § 5840(f).

⁴⁸ See id. at § 5840.

⁴⁹ Id. at § 5840(m)(6).

One original and one copy of the supplemental Application shall be filed with the Commission's Docket Office and concurrently served on any Local Entities affected by the change in Video Service Area.

3. Commission Review and Issuance of a Supplemental Application

The Commission, acting through the Executive Director, will notify the State Video Franchise Holder and any affected Local Entities whether the supplemental Application is complete or incomplete on or before the thirtieth calendar day following the filing date of the supplemental Application. The State Video Franchise Holder will have the opportunity to remedy any incomplete supplemental Application. Once an incomplete Application is refiled with the missing information, the Commission will have 30 days to determine the completeness of a supplemented Application.

The Commission's failure to notify the State Video Franchise Holder of a supplemental Application's completeness or incompleteness before the forty-fourth calendar day after the receipt of a supplemental Application shall be deemed to constitute issuance of the amended franchise, so long as the State Video Franchise Holder is not statutorily ineligible for a new, renewed, or transferred State Video Franchise pursuant to DIVCA.

D. Transfer of a State Video Franchise

1. Necessary Conditions for the Transfer of a State Video Franchise

A State Video Franchise may be transferred to a successor-in-interest of the State Video Franchise Holder to which the State Video Franchise was originally granted. This transfer may be as a result of merger, sale, assignment, bankruptcy, restructuring, or any other type of transaction, so long as two conditions are met:

- (1) Prior to the transfer, the transferee (successor-in-interest) submits to the Commission and all affected Local Entities all of the information required by this General Order of an initial Applicant for a State Video Franchise; and

- (2) The transferee submits an affidavit stating that it agrees that any collective bargaining agreement entered into by the predecessor-in-interest State Video Franchise Holder shall continue to be honored, paid, or performed to the same extent as would be required if the predecessor-in-interest State Video Franchise Holder continued to operate for the duration of the State Video Franchise, unless the duration of the collective bargaining agreement is limited by its own terms or by state or federal law.⁵⁰

2. Commission Review of the Transfer of a State Video Franchise

The Commission will process the Application for transfer of a State Video Franchise pursuant to the same standards applicable to an Application for a new State Video Franchise.

E. Voluntary Termination of a State Video Franchise

A State Video Franchise Holder may terminate its State Video Franchise by submitting at least 90 days' prior written notice to the Commission, affected Local Entities, and all of its customers.⁵¹

Within 14 business days after termination of a State Video Franchise, the State Video Franchise Holder shall inform the Commission and the affected Local Entities of the number of customers in the service area of the State Video Franchise being terminated; and the method by which customers were notified of the termination, including a copy of such customer notice.⁵²

F. Miscellaneous Changes

As a condition of being issued a State Video Franchise, a State Video Franchise Holder must notify the Commission and affected Local Entities within 14 business days of the following:

⁵⁰ Id. at §§ 5840(l), 5970.

⁵¹ Id. at § 5840(j).

⁵² Id. at § 5840(m)(5).

- (1) Any transaction involving a change in the ownership, operation, control, or corporate organization of the State Video Franchise Holder, including but not limited to a merger, acquisition, or reorganization;
- (2) A change in the State Video Franchise Holder's legal name or the adoption of, or change to, an assumed business name. Notification to the Commission shall consist of a certified copy of either of the following:
 - (a) the proposed amendment to the State Video Franchise, or
 - (b) the certificate of assumed business name; or
- (3) A change in the State Video Franchise Holder's principal business address or the name or business address of the person authorized to receive notice on behalf of the State Video Franchise Holder.⁵³

VII. Reporting Requirements

A. Reports for Collection of the User Fee

The Commission may require a State Video Franchise Holder to furnish information and reports to the Commission, at the time or times the Commission specifies, to enable the Commission to determine the User Fee pursuant to Public Utilities Code § 441.⁵⁴

Any Video Service Provider required to submit information and reports pursuant to Article 4 to Chapter 2.5 of Part 1 of Division 1 of the Public Utilities Code, in lieu thereof, submit information or reports made to any other governmental agency if all of the following conditions are met: (i) the alternate information or reports contain all of the information required by the Commission; (ii) the requirements to which the alternate reports or information are responsive are clearly identified; and (iii) the information or reports are certified by the Video Service Provider to be true and correct.⁵⁵

B. Annual Employment Reports

⁵³ Id. at § 5840(m).

⁵⁴ Id. at § 443(a).

⁵⁵ Id. at § 443(b).

**1. Reporting Obligations Imposed on
State Video Franchise Holders with
More than 750 California Employees**

A State Video Franchise Holder employing more than 750 total employees in California shall report to the Commission annual employment information, as of January 1 of the year in which it first was issued a State Video Franchise and each year thereafter. These reports shall include the following information:

- (1) The number of California residents employed by the State Video Franchise Holder, calculated on a full-time or full-time equivalent basis.
- (2) The percentage of the State Video Franchise Holder's total domestic workforce that resides in California, calculated on a full-time or full-time equivalent basis.

- (3) The types and numbers of jobs by occupational classification held by residents of California employed by State Video Franchise Holders and the average pay and benefits of those jobs and, separately, the number of out-of-state residents employed by independent contractors, companies, and consultants hired by the State Video Franchise Holder, calculated on a full-time or full-time equivalent basis, when the State Video Franchise Holder is not contractually prohibited from disclosing the information to the public. This paragraph applies only to those employees of an independent contractor, company, or consultant that are personally providing services to the State Video Franchise Holder, and does not apply to employees of an independent contractor, company, or consultant not personally performing services for the State Video Franchise Holder.
- (4) The number of net new positions proposed to be created directly by the State Video Franchise Holder during the upcoming year by occupational classifications and by category of full-time, part-time, temporary, and contract employees.⁵⁶

These reports shall be filed with the Commission no later than April 1 for each annual reporting period.

2. Commission Reports to Legislative Committees

The Commission shall annually report the information required to be reported by State Video Franchise Holders pursuant to Rule VII.B.1 to the Assembly Committee on Utilities and Commerce and the Senate Committee on Energy, Utilities and Communications, or their successor committees, and within a reasonable time thereafter, shall make the information available to the public on its Internet website.⁵⁷

⁵⁶ Id. at § 5920(a).

⁵⁷ Id. at § 5920(b).

C. Annual Reports on Broadband and Video Services

1. Reporting Obligations Imposed on State Video Franchise Holders

Commencing on April 1, 2008 and annually no later than April 1 each year thereafter, a State Video Franchise Holder shall report to the Commission and DRA annual information on a Census Tract basis as of January 1, 2008 and each year thereafter on the extent to which it provides Video and Broadband Service in the state. These reports shall include the following information, pursuant to the guidelines established in Appendix D and Appendix E of R.[XX-XX-XX]:⁵⁸

(1) Broadband Information:⁵⁹

- (a) The number of Households in each Census Tract to which the State Video Franchise Holder makes Broadband available in this state. Alternatively, the State Video Franchise Holder may submit a reasonable approximation of the number of Households in each Census Tract if the State Video Franchise Holder is able to produce information that successfully demonstrates to the Commission (i) that the State Video Franchise Holder does not maintain this information on a Census Tract basis in the normal course of business and (ii) the State Video Franchise Holder's alternate reporting methodology produces a reasonable approximation of data reported by Census Tract.⁶⁰
- (b) The number of Households in each Census Tract that subscribe to Broadband that the State Video Franchise Holder makes available in this state.

⁵⁸ For example, the first report filed April 1, 2008 would be for calendar year 2007 (January to December 2007).

⁵⁹ CAL. PUB. UTIL. CODE § 5960(b)(1).

⁶⁰ We note that Public Utilities Code § 5960(b)(1)(B) requires State Video Franchise Holders to report Broadband customer subscribership on a Census Tract basis (without any approximation), ~~and since State Video Franchise Holders will have to record this Broadband information by Census Tract, we expect that it will be difficult for a State Video Franchise Holder to successfully demonstrate that it does not maintain other forms of Broadband information on a Census Tract basis.~~

- (c) The extent to which the Broadband provided by the State Video Franchise Holder to individual Households in each Census Tract utilizes wireline-based facilities or another technology. If another technology is used by the State Franchise Holder, it shall specify the technology.
- (2) Video Information⁶¹
 - (a) If the State Video Franchise Holder is a Telephone Corporation:
 - (i) the number of Households in each Census Tract of the State Video Franchise Holder's Telephone Service Area; and
 - (ii) the number of Households in each Census Tract of the State Video Franchise Holder's Telephone Service Area that are offered Video Service by the State Video Franchise Holder.
 - (b) If the State Video Franchise Holder is not a Telephone Corporation:
 - (i) the number of Households in each Census Tract of the State Video Franchise Holder's Video Service Area; and
 - (ii) the number of Households in each Census Tract of the State Video Franchise Holder's Video Service Area that are offered Video Service by the State Video Franchise Holder.
- (3) Low-Income Household Information⁶²
 - (a) The number of Low-Income Households in each Census Tract of the State Video Franchise Holder's Video Service Area.
 - (b) The number of Low-Income Households in the State Video Franchise Holder's Video Service Area that are

⁶¹ Id. at § 5960(b)(2).

⁶² Id. at § 5960(b)(3).

offered Video Service by the State Video Franchise Holder.

In accordance with Appendix E of R.[XX-XX-XX], State Video Franchise Holders shall utilize data based on U.S. Census Bureau estimates adjusted annually to reflect rates of changes and distribution through January 1, 2007 to determine the number of Low-Income Households.

In accordance with Appendix E of R.[XX-XX-XX], State Video Franchise Holders shall utilize data based on U.S. Census Bureau estimates adjusted annually to reflect rates of changes and distribution through January 1 after the conclusion of each annual reporting period.

If a State Video Franchise is transferred to a successor-in-interest of the State Video Franchise Holder to which the certificate originally is granted, the transferee shall submit to the Commission of the information required by Public Utilities Code Section 5960.⁶³

2. Commission Reports to the Legislature and Governor

The Commission, no later than July 1, 2008 and annually no later than July 1 thereafter, shall submit to the Legislature and Governor a report that includes information submitted by State Video Franchise Holders as to Broadband, Video Service, and Low-Income data, based on year-end data, on an aggregated basis ~~aggregated according to technology used in service provision~~.⁶⁴

All information submitted to the Commission and reported by the Commission pursuant to this section shall be disclosed to the public only as provided for pursuant to Public Utilities Code § 583.⁶⁵ No individually identifiable customer information shall be subject to public disclosure.⁶⁶

D. Information on Service to Community Centers

A State Video Franchise Holder or its wireline Affiliates with more than 1,000,000 telephone customers in California shall report annual information, as of

⁶³ Id. at § 5970(a).

⁶⁴ Id. at § 5960(c).

⁶⁵ Id. at § 5960(d).

⁶⁶ Id.

January 1 of the year in which its State Video Franchise is granted and each year thereafter, on the extent to which the State Video Franchise Holder makes Video and Broadband Service available at no cost to Community Centers in underserved areas, as determined by the State Video Franchise Holder. The reports shall include the following information:

- (1) The number of Community Centers in underserved areas where the State Video Franchise Holder provides Video and Broadband Service without charge.
- (2) The number of video customers subscribing to the State Video Franchise Holder's Video Service.⁶⁷

The Community Center reports shall be filed with the Commission and DRA on a date no later than April 1 after the conclusion of each annual reporting period.

E. Annual Reports on Collective Bargaining

A State Video Franchise Holder shall report to the Commission whether its California employees are covered by a collective bargaining agreement. This report shall be filed with the Commission on a date no later than April 1 after the conclusion of each annual reporting period.

FG. Workplace Diversity Reports

If a State Video Franchise Holder declines to provide workplace diversity data equivalent to that of other California Utilities Diversity Council members, the State Video Franchise Holder shall provide the Commission a concurrent copy of all future Employment Information Report EEO-1 filings when it submits these filings to the federal Department of Labor. If they are multi-establishment employers, State Video Franchise Holders subject to this requirement shall provide the Commission EEO-1 reports that describe workplace diversity of both the parent company and its California wireline Affiliates.

GF. Additional Information

The Commission reserves the authority to require additional reports that are necessary to the enforcement of specific DIVCA provisions.

H. Conflict

⁶⁷ Id. at § 5890(b)(3).

Because the purpose of this General Order is to promulgate the rules necessary to implement DIVCA, in the event of any conflict between this General Order and DIVCA, including future amendments, the terms of DIVCA shall control.

(END OF APPENDIX B)

Attachment A

Application For A New Or Amended California
State Video Franchise California Public Utilities
Commission

**APPLICATION FOR A NEW OR AMENDED
CALIFORNIA STATE VIDEO FRANCHISE
CALIFORNIA PUBLIC UTILITIES COMMISSION**

PLEASE TYPE ALL INFORMATION UNLESS INSTRUCTED OTHERWISE.

Type of Application

1. Check as appropriate:

☐ New Franchise

☐ Amended Franchise

Applicant Information

2. Applicant's State Video Franchise number (if seeking an amended Franchise):

3. Applicant's full legal name:

4. Name under which the Applicant does or will do business in California:

5. Legal Name and contact information of Applicant's parent companies, including the ultimate parent:

Parent's Full Legal Name: _____

Address: _____

Phone: _____

6. Applicant's principal place of business:

Address: _____

Phone: _____

7. Contact information for the person responsible for ongoing communication with the Commission about Video Service business:

Name: _____

Title: _____

Address: _____

Phone (Business and mobile if any): _____

Fax: _____

Email: _____

8. Attach as Appendix A the names and titles of the Applicant's principal officers.

Build-Out Information

Answer questions 9 through 11 only if the Applicant or one of its Affiliates is a Telephone Corporation. Other Applicants should go to Question 13.

9. Does the Applicant alone or together with its affiliates have more than 1,000,000 telephone customers in California?

☐ Yes ☐ No

10. Does the Video Service Area include areas outside the Telephone Service Area of the Applicant and its affiliates?

☐ Yes ☐ No

11. Excluding direct-to-home satellite, is Video Service currently offered by another Video Service Provider in the Video Service Area proposed in this Application?

☐ Yes ☐ No

Existing Local Cable or Video Franchise Holder Information

Answer Question 12 only Applicant or its Affiliates is not an existing local cable or video franchise holder.

12. Does the Applicant alone or together with its Affiliates currently hold a local franchise, or has the Applicant held a local franchise in the last six months, in the Video Service Area?

☐ Yes ☐ No

If "Yes," then download and complete the electronic template available at <http://www.cpuc.ca.gov/video/application>.

Video Service Area Information

13. Provide a geographic description of the Video Service Area that is to be served pursuant to this Application under the State Video Franchise.

The description shall be as detailed below:

- a. A collection of U.S. Census Bureau Block Groups, or
- b. A geographic information system digital boundary meeting or exceeding national map accuracy standards.
 - *If Applicant chooses “a,” then download and complete the electronic template available at <http://www.cpuc.ca.gov/video/application> .*
 - *If Applicant chooses “b,” then submit the geographic information system digital boundary in digital format and on a CD to the Commission.*

Applicant may attest in its application that it will provide the socioeconomic status information required in Questions 14 and 15 within four months of filing an application, skip Questions 14 and 15, and proceed to Question 16. Otherwise, the Applicant must provide the socioeconomic status information required in Questions 14 and 15 with the application.

14. Provide, as detailed below, a description of the socioeconomic status information of residents within the Video Service Area to be served pursuant to a State Video Franchise.
- *The Applicant shall provide this description utilizing the template available at <http://www.cpuc.ca.gov/video/application>.*

Information requirements:

- a. Unless directed otherwise below, Applicant shall submit socioeconomic status information as of January 1 of the year in which the Applicant or State Video Franchise Holder applies for a State Video Franchise or an amendment to a State Video Franchise.
- b. This socioeconomic status information shall include at a minimum the following information, as designated by individual Census Tract included in the Video Service Area
 - i. Broadband (Utilize the most recent publicly available U.S. Census information to determine the number of Households):
 - 1. The number of Households in each Census Tract to which the Company makes Broadband available.
 - 2. The number of Households in each Census Tract that subscribe to Broadband that the Company makes available.
 - 3. Whether the Broadband Services provided by the Company to individual Households in each Census Tract utilize wireline based

facilities or another technology. If another technology is used, Applicant shall specify the technology.

- ii. Video service (Utilize the most recent publicly available U.S. Census information to determine the number of Households):
 - 1. The number of Households in each Census Tract.
 - 2. The number of Households in each Census Tract that are offered Video Service by the Company.
- iii. Low-Income (Utilize the most recent publicly available U.S. Census information to determine the number of Low-Income Households):
 - 1. The number of Low-Income Households in each Census Tract.
 - 2. The number of Low-Income Households that are eligible for Video Service offered by the Company.

15. If the Applicant or any of its affiliates or subsidiaries is a Telephone Corporation, the Applicant shall provide a description of the socioeconomic status information of all residents within its Telephone Service Area.

- *The Applicant shall provide this description utilizing the template available at <http://www.cpuc.ca.gov/video/application>.*

Information requirements:

- a. Unless directed otherwise below, Applicant shall submit socioeconomic status information as of January 1 of the year in which the Applicant or State Video Franchise Holder applies for a State Video Franchise or an amendment to a State Video Franchise.
- b. This socioeconomic status information shall include at a minimum the following information, as designated by individual Census Tract included in the Telephone Service Area:
 - i. Broadband (Utilize the most recent publicly available U.S. Census information to determine the number of Households):
 - 1. The number of Households in each Census Tract to which the Company makes Broadband available.
 - 2. The number of Households in each Census Tract that subscribe to Broadband that the Company makes available.
 - 3. Whether the Broadband Services provided by the Company to individual Households in each Census Tract utilize wireline-based facilities or another technology. If another technology is used, Applicant shall specify the technology.
 - ii. Video service (Utilize the most recent publicly available U.S. Census information to determine the number of Households):
 - 1. The number of Households in each Census Tract.
 - 2. The number of Households in each Census Tract that are offered Video Service by the Company.

- iii. Low-Income (Utilize the most recent publicly available U.S. Census information to determine the number of Low-Income Households):
 1. The number of Low-Income Households in each Census Tract.
 2. The number of Low-Income Households that are eligible for Video Service offered by the Company.
16. Utilizing the template provided at <http://www.cpuc.ca.gov/video/application>, the Applicant shall input the expected date for the deployment of Video Service for each Area in the Video Service Area.

Financial, Legal, and Technical Qualifications

17. ~~Attach to this Application, as Appendix CB, a copy of a fully executed bond in the amount of \$1000 per 20,000 households in the Video Service Area, with a \$100,000 minimum and a \$500,000 maximum. The bond must list the Commission as obligee and be issued by a corporate surety authorized to transact a surety business in California. The Applicant will attest that within five (5) business days after receipt of a California Video Franchise Certificate and prior to initiating video service, the Franchise Holder will provide~~ a copy of a fully executed bond in the amount of \$100,000 per 20,000 households in the Video Service Area, with a \$100,000 minimum and a \$500,000 maximum to the Executive Director. The bond must list the Commission as obligee and be issued by a corporate surety authorized to transact a surety business in California.

Local Entity Contact Information

18. Utilizing the template provided at <http://www.cpuc.ca.gov/video/application>, the Applicant shall provide the contact name and information for a representative from each Local Entity within the Video Service Area.

Application Fee

19. Attach to this Application a check in the amount of \$2,000 made payable to the "California Public Utilities Commission."

Affidavit

20. Complete and submit the affidavit attached to this Application.

A COMPLETE APPLICATION MUST INCLUDE:

- | | |
|--|---|
| <input type="checkbox"/> Completed Application form | <input type="checkbox"/> Appendix B |
| <input type="checkbox"/> CD(s) containing template(s) and data from the Commission website | <input type="checkbox"/> Appendix C |
| <input type="checkbox"/> Appendix A | <input type="checkbox"/> Check in the amount of \$2,000 |
| | <input type="checkbox"/> Completed Affidavit |

APPENDIX A

Principal Officers

Name

Title

AFFIDAVIT

STATE OF _____

COUNTY OF _____

My name is _____. I am _____ (Title) of _____ (Company). My personal knowledge of the facts stated herein has been derived from my employment with _____ (Company).

I swear or affirm that I have personal knowledge of the facts stated in this Application for a California State Video Franchise to provide Video Service, that I am competent to testify to them, and that I have the authority to make this Application on behalf of and to bind the Company. I further swear or affirm that _____ [Name of Applicant]:

1. Has filed or will timely file with the Federal Communications Commission all forms required by the Federal Communications Commission before offering Video Service in this state.
2. Agrees to comply with all lawful city, county, or city and county regulations regarding the time, place, and manner of using the public rights-of-way, including but not limited to, payment of applicable encroachment, permit, and inspection fees.
3. Will concurrently deliver a copy of this Application to any Local Entity in the video service area where the Applicant will provide service.
4. Possesses the financial, legal, and technical qualifications necessary to construct and operate the proposed system and promptly repair any damage to the public rights-of-way caused by the Applicant.
5. Is not in violation of any final nonappealable order relating to either the Cable Television and Video Providers Customer Service and Information Act (California Public Utilities Code Article 3.5 (commencing with § 53054) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code) or the Video Customer Service Act (California Public Utilities Code Article 4.5 (commencing with § 53088) of Chapter 1 or Part 1 of Division 2 of Title 5 of the Government Code).
6. _____ (Holder) will provide the socioeconomic status information required in Questions 14 and 15 of the Application within four months of filing an application.
7. _____ (Holder) will provide a copy of a fully executed bond in the amount of \$100,000 per 20,000 households in the Video Service Area, with a \$100,000 minimum and a \$500,000 maximum to the Executive Director within five (5) business days after receipt of a California Video Franchise Certificate and prior to initiating video service. The bond must list the

Commission as oblige and be issued by a corporate surety authorized to transact a surety business in California.

I further swear or affirm that _____ [Name of Company] agrees to comply with all federal and state statutes, rules, and regulations, including, but not limited to, the following:

1. As provided in Public Utilities Code § 5890, Applicant will not discriminate in the provision of Video Service.
2. Applicant will abide by all applicable consumer protection laws and rules as provided in Public Utilities Code § 5900.
3. Applicant will remit the fee required by subdivision California Public Utilities Code § 5860(a) to the Local Entity.
4. The Applicant will provide public, educational, and governmental access channels and the required funding as required by Public Utilities Code § 5870.
5. Applicant and any and all of its wireline Affiliates' operations in California now and in the future shall be included for the purposes of applying Public Utilities Code §§ 5840, 5890, 5960, and 5940. Applicant specifically attests to the following:
 - a. Reporting Requirements: Either (i) Applicant or (ii) the parent company of Applicant shall produce Commission-mandated reports for and on behalf of Applicant and any and all its wireline Affiliates that operate in California.
 - b. Antidiscrimination:
 - i. If Applicant and its wireline Affiliates together have more than one million telephone customers in California, Applicant shall satisfy the build-out requirements set forth in Public Utilities Code § 5890(b) & (e).
 - ii. If Applicant and its wireline Affiliates together have less than one million telephone customers in California, Applicant shall satisfy any build-out requirements established pursuant in Public Utilities Code § 5890(c).
 - c. Cross-subsidization: If Applicant or its affiliates also provides stand-alone, residential, primary-line basic telephone service, Applicant agrees to refrain from using any increasing the rate of this service increase of its or its Affiliates' basic telephone service offerings to reduce costs of Applicant's to finance the cost of deploying a network to provide video service offerings.
 - d. "Affiliate," as referenced herein, means any company 5 per cent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a state video franchise holder or any of its subsidiaries, or by that state video franchise holder's controlling

corporation and/or any of its subsidiaries as well as any company in which the state video franchise holder, its controlling corporation, or any of the state video franchise holder's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership.

6. Applicant shall fulfill all other requirements imposed by the Digital Infrastructure and Video Competition Act.

I swear or affirm that all of the statements and representations made in this Application are true and correct.

Signature and title

Typed or printed name and title

SUBSCRIBED AND SWORN to before me on the ____ day of _____, 200__.

Notary Public In and For the State of California.

My Commission expires: _____

Appendix C: Entities Qualified to Become a State Video Franchise Holder

In the application certification required by Public Utilities Code § 5840(e)(1)(B), the applicant shall attest that any and all of its wireline Affiliates' operations in California now and in the future will be included for the purposes of applying Public Utilities Code §§5840, 5890, 5960, and 5940. This attestation shall include a commitment to fulfill the following obligations:

1. **Reporting requirements:** Either (a) the applicant or (b) the parent company of the applicant produces Commission mandated reports for and on behalf the applicant of any and all of its wireline Affiliates that operate in California.
2. **Antidiscrimination:**
 - a. If the applicant and its Affiliates together have more than one million telephone customers in California, the applicant satisfies the build out requirements set forth in Public Utilities Code §5890(b) &(e).
 - b. If the applicant and its Affiliates together have less than one million telephone customers in California, the applicant satisfies any build out requirements established pursuant in Public Utilities Code §5890(c).
3. Cross-subsidization: If Applicant or its affiliates also provides stand-alone, residential, primary-line basic telephone service, Applicant agrees to refrain from using any increasing the rate of this service increase of its or its Affiliates' basic telephone service offerings to reduce costs of Applicant's to finance the cost of deploying a network to provide video service offerings.

All General Order and decision references to requirements imposed on a state video franchise "holder" assume that the state video franchise holder is meeting the conditions stated above.

"Affiliate" means any company 5 per cent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a state video franchise holder or any of its subsidiaries, or by that state video franchise holder's controlling corporation and/or any of its subsidiaries as well as any company in which the state video franchise holder, its

controlling corporation, or any of the state video franchise holder's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership.

Appendix D: “Census Tract Basis” Reporting for Availability Data

This Appendix describes technical requirements for broadband and video availability reports. We recognize that some video service providers may keep records that ~~assignmatch~~ their potential customers’ addresses ~~to~~with Census Block Groups, while others may catalog these addresses in alternate formulations that do not nest neatly within Census Tracts. For the latter, inherent imprecision is introduced when smaller groupings of spatial data are aggregated into larger Census Tracts.¹ This imprecision must be balanced with the need to maintain appropriate and consistent levels of detailed information required for informing our policy decisions. This Appendix, therefore, adopts standards for availability data reporting on a “census tract basis.”

Applicants and state video franchise holders are deemed to have submitted availability data on a “census tract basis” if the following standards and conditions are fulfilled:

1. Broadband and video data is reported to the Commission in the template(s) created by the Commission, if the Commission’s public website provides the template(s) for applicants’ or state video franchise holders’ use.
2. Broadband and video data is collected either on the basis of:
 - a. Current Census Block Groups: Census Block Groups at the most recent U.S. Census.
 - b. Alternate Geospatial Areas: Geospatial areas that (i) contain on average no more housing units than the average Current Census Block Group in California and (ii) under no circumstances are greater than 1,000 housing units.²

¹ Commonly referred to as the Modifiable Area Unit Problem. See S. Openshaw and S. Alvandies, *Applying Geocomputation to the Analysis of Spatial Distributions*, in 1 GEOGRAPHIC INFORMATION SYSTEMS: PRINCIPLES AND TECHNICAL ISSUES (P. Longley et al. eds., 2nd ed. 1999); C. Armhein, *Searching for the Elusive Aggregation Effect: Evidence from Statistical Simulations*, 27 ENV’T&PLAN. 105 (Jan. 1995).

² A housing unit is a house, an apartment, a mobile home or trailer, a group of rooms, or a single room occupied as a separate living quarters, or if vacant, intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants live separately from any other individuals in the building and that have direct access from outside the building or through a common hall.

3. Where Census Tract data provided to the Commission is wholly based upon data that is collected either by (i) Current Census Block Groups or (ii) Alternate Geospatial Areas that are entirely contained within a single Census Tract at the most recent U.S. Census (Current Census Tract), the video service provider shall produce the Current Census Tract number and associated broadband and video data. The video service provider also shall indicate that the data reported falls entirely within a single Current Census Tract (e.g., Aggregate_Flag = 1).
4. Where Census Tract data provided to the Commission is based upon data that is not collected by areas that are entirely contained within a single Current Census Tract, the video service provider must provide the Commission the following information for each Current Census Tract:
 - a. The Census Tract number.
 - b. Broadband and video data for households in the Census Tract. Broadband and video data shall be assigned to Census Tracts by consistently using one of the two following methods:
 - i. An Alternate Geospatial Area is assigned to a Current Census Tract if that Tract contains the mean population weighted geographic center of Census Block Nodes falling within the Alternate Geospatial Area.
 - ii. An Alternate Geospatial Area is assigned to a Census Tract if that Tract contains the highest population of summed Census Block Nodes falling within the Alternate Geospatial Area.
 - c. A field indicating of method of choice for associating data with the Census Tract (e.g., aggregate_method = '1' for mean weighted center method, aggregate_method = '2' for highest population method).
 - d. A field indicating the number of Alternate Geospatial Areas that cross over the boundaries of the Census Tract (e.g., Aggregate_Flag = 2 for a Census Tract that contains two Alternate Geospatial Areas that fall within more than one Census Tract; Aggregate_Flag = 3 for a Census Tract that contains three Alternate Geospatial Areas that fall within more than one Census Tract).
 - e. A field indicating the summed population of all Census Block Nodes contained within Alternate Geospatial Areas that (i) fall within more than one Census Tract and (ii) are assigned to the Census Tract.

Appendix E: Data for Demographic Reporting Requirements

DIVCA requires state video franchise holders to submit demographic data on population and income distribution. These data shall be based upon projections from the most recent U.S. Census data.

A. Acceptable Sources of Demographic Data

Projections of U.S. Census data typically are not publicly available. To produce this required demographic data, state video franchise holders shall rely on data and projections from private vendors capable of producing reliable projections based on U.S. Census data. The fair, uniform, and consistent administration of DIVCA requires comparability among data sources. These data will be used by the Commission to assess compliance with a variety of DIVCA provisions.

By the date of the final order, the Commission shall compile a list of acceptable vendors from which it will accept demographic data. The Commission will post the list of acceptable vendors on its public website. State video franchise holders that desire to submit data from a vendor not on the Commission's list must first file a petition with the Commission that details the alternate vendor's comparability with the sources on the Commission's list. An alternate vendor may be used only if the state video franchise holder receives written permission to do so from Commission staff in the video franchise unit.

B. Calculation of Household Information

Pursuant to Public Utilities Code §§ 5840(e)(6) and 5960(b), video service providers must report, on a Census Tract basis, information on housing units in their service areas. The following approximations may be used in producing this data:

1. Number of Households in the Telephone Service Area: The video service provider compiles housing unit counts from individual Census Block Groups falling within its telephone service area. Housing unit counts by Census Block Group are then summed to produce Census Tract results.
2. Number of Households in the Video Service Area: The video service provider compiles individual housing unit counts from Census Block Groups falling within its video service area. Housing unit counts by Census Block Group are then summed to produce Census Tract results.
3. Number of Low-Income Households in the Video Service Area: The Video service provider compiles low-income household counts ~~from~~ from individual Census Block Groups falling within its video service

area, and determines the percentage of low income households as of January 1, 2007. This percentage is multiplied by the number of households (Item #2) to calculate the number of low-income housing units. Housing unit counts by Census Block Group then are summed to produce Census Tract results.

4. Number of Low-Income Households Offered Video Service: The video service provider multiplies (i) the total number of housing units it offers video service in a Census Block Group by (ii) the percentage of low-income householdsing units in the Census Block Group.
The percentage of low-income householdsing units is calculated as of January 1, 2007 using U.S. Census projections of low-income and total households by Census Block Group.~~by dividing the number of low income housing units (Item #3) by the total house units in a Census Block Group (Item #4).~~ Census Block Group counts of low-income housing units offered video service ~~then~~ are then summed to produce Census Tract counts.

Appendix H: Enforcement Actions Pursuant to DIVCA

PENALTIES

- Action:** **Revocation or Suspension of State Video Franchise Due to Noncompliance with Statutory Provision(s) Subject to Commission Regulation**
- When:** An informal investigation determines:
- 1) The state video franchise holder has failed to comply with any demand, ruling, or requirement of the Commission made pursuant to and within the authority of DIVCA; or
 - 2) The state video franchise holder has violated any provision of DIVCA or any rule or regulation made by the Commission under and within the authority of this legislation; or
 - 3) A fact or condition exists that, if it had existed at the time of the original application for the state franchise (or transfer or amendment thereof), reasonably would have warranted the Commission's refusal to issue the state video franchise originally (or grant the transfer or amendment thereof).
- How:** The Commission may initiate a license revocation or suspension proceeding through the vote of the Commission. This proceeding ~~will~~ may include public hearings as discussed in this decision. Revocation or suspension of the state video franchise will require a Commission vote at a public meeting.
- Who:** All interested parties may participate in proceeding.
- Action:** **Revocation or Suspension of State Video Franchise Due to Pattern and Practice of Noncompliance with Statutory Provision(s) Subject to Local Entities' Regulation**
- When:** Following the opening of a license revocation or license suspension proceeding by the Commission into allegations that a video franchise holder has a pattern and practice of failing to comply with measures subject to local entities' regulation.
- How:** The Commission may initiate a proceeding to revoke or suspend a franchise through a vote of the Commission. The revocation proceeding will include public hearings. The proceeding will

include no new Commission investigation into the violations of provisions found by local entities or the courts. Revocation or suspension will require the vote of the Commission at a public meeting.

Who: All interested parties may participate in proceeding.

Action: Fine Levied

When: An informal investigation determines:

- 1) The state video franchise holder has failed to comply with any demand, ruling, or requirement of the Commission made pursuant to and within the authority of Public Utilities Code Section § 5890; or
- 2) The state video franchise holder has violated any provision of Public Utilities Code § 5890 or any rule or regulation made by the Commission under and within the authority of this Section.

How: For minor fines of less than \$5,000, the Executive Director will provide public notice via the Commission Calendar and via written notice to the state video franchise holder of the Commission's intention to impose a minor fine of less than \$5,000. Minor fines will be addressed through the Commission's resolution process.

For major fines, the Commission will open a formal investigation into alleged violations of DIVCA through a majority vote of the Commission at a public meeting. Such an investigation ~~will~~ may include public hearings. Any fine of \$5,000 or more will require the vote of the Commission at a public meeting.

Who: All interested parties may participate by providing comments on a proposed resolution or through participation in the formal investigation.

FORMAL INVESTIGATIONS

Action: Investigations into Violations of Franchising Provisions

When: The Commission alleges that applicant has failed to comply with DIVCA franchising requirements.

How: The Commission may initiate a formal investigation into violations of the franchising provisions through a majority vote of the Commission at a public meeting. The investigation ~~will~~ may include public hearings as discussed in this decision. Any penalty will require the vote of the Commission at a public meeting.

Who: All interested parties may participate in proceeding.

Action: Investigation into Antidiscrimination and Build-Out Provisions

When: 1) In response to a formal complaint filed by a local entity; or
2) Following the opening of an informal Commission investigation.

How: The Commission may initiate a formal investigation into alleged violations of the franchising provisions through a majority vote of the Commission at a public meeting. The investigation ~~will~~ may include public hearings. Any penalty will require the vote of the Commission at a public meeting.

Who: All interested parties may participate in proceeding.

Action: Investigation into Reporting Requirements

When: 1) In response to a formal complaint filed by a local entity for failure of franchise to submit a report relevant to enforcement of Public Utilities Code § 5890; or
2) Following the opening of an informal investigation by the Commission to enforce any reporting provision

How: The Commission may initiate a formal investigation into alleged violations of the reporting requirements through a majority vote of the Commission at a public meeting. The investigation ~~will~~ may include public hearings as discussed in this decision. Any penalty will require the vote of the Commission at a public meeting.

Who: All interested parties may participate in proceeding.

Action: Investigation into Violations of Cross-Subsidy Provisions Found in DIVCA

When: Following the opening of an investigation by the Commission into allegations that a telecommunications utility is subsidizing video services with revenues from residential basic rates.

How: The Commission may initiate a formal investigation into alleged violations of the reporting requirements through a majority vote of the Commission at a public meeting. The investigation ~~will~~ may include public hearings as discussed in this decision. The investigation will focus on the telecommunications utility and be conducted pursuant to telecommunications utility regulation as discussed in this decision. Any penalty will require the vote of the Commission at a public meeting.

Who: All interested parties may participate in proceeding.

Action: Investigation into Failure to Submit Required User Fees

When: Following the opening of an informal investigation by the Commission into allegations that a video franchise holder has failed to submit required user fees on a timely basis.

How: The Commission may initiate a formal investigation into alleged failures to submit required regulatory fees by majority vote at a public meeting. The investigation ~~will~~ may include public hearings as discussed in this decision. Any penalty will require the vote of the Commission at a public meeting. The Commission may pursue the collection of fees in a court of competent jurisdiction

Who: All interested parties may participate in proceeding.

Note: Under DIVCA, the Commission is only required to hold hearings if a holder seeks an extension of time to comply with § 5890 (b), (c), or (e); and before issuing a decision in a complaint brought by a local government, or a Commission investigation, regarding whether a holder is offering video service as required by § 5890. In all other instances, pursuant to § 5810(2)(G), the Commission retains discretion under applicable statutes and rules, consistent with due process, to determine whether or not to hold a hearing and, if so, what type of hearing.